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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 430

SAMUEL M. ATKINSON, ET AL., PETITIONERS,

vs.

SINCLAIR REFINING COMPANY.

No. 434

SINCLAIR REFINING COMPANY, PETITIONER,

vs.

SAMUEL M. ATKINSON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 22, 1961
CERTIORARI GRANTED DECEMBER 11, 1961



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**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Nos. 13092, 13136, 13137

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

vs.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellants.

Appeals from the United States District Court for the
Northern District of Indiana, Hammond Division.

Honorable LUTHER M. SWYGERT, District Judge.

Joint Appendix—Filed November 28, 1960

[File endorsement omitted]

[fol. 2]

**IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

**HAMMOND DIVISION
Hammond Civil 2566**

Sinclair Refining Company, a corporation.

VS.

Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization.

DOCKET ENTRIES

3-12-59 Complaint filed. Summons issued and given to Marshal, Hammond. Cost Bond filed.

3-21-59 Summons returned served on deft. Kenneth Eddleman, Sec. of Local 7-210, 3-18-59 (3.20).

Summons returned served on deft. A. Dave Hering, International Representative, 3-18-59 (2.00).

[fol. 3] Summons returned served on deft. George Badis, 3-18-59 (2.00).

Summons returned served on deft. Charles Bainbridge, 3-18-59 (2.00).

Summons returned served on deft. Wilbur Beard,
3-19-59 (3.20).

Summons returned served on deft. Joseph Bundeck,
3-18-59 (3.10).

Summons returned served on deft. Zoltan Cziperle,
3-19-59 (3.00).

Summons returned served on deft. Frank Dicken,
3-18-59 (3.10).

Summons returned served on deft. Arthur T. Juhasz,
3-19-50 (3.30).

Summons returned served on deft. John Mehrbrodt,
3-18-59 (2.00).

Summons returned served on deft. John Reitz,
3-18-59 (2.00).

Summons returned served on deft. A. F. Schilling,
3-18-59 (2.00).

3-25-50 Summons returned served on deft. Samuel Atkin-
son, 3-19-59 (2.20).

Summons returned served on deft. Paul Bennett,
3-20-59 (7.00).

Summons returned served on deft. Vergil Brading,
3-19-59 (3.20).

Summons returned served on deft. Robert Hughes,
3-19-59 (2.40).

Summons returned served on deft. Harold Leach,
3-19-59 (3.00).

Summons returned served on deft. Douglas Long,
3-22-59 (5.80).

Summons returned served on deft. Sherman Moore,
3-19-59 (2.40).

[fol. 4] Summons returned served on deft. Mike
Payer, 3-19-59 (2.00).

Summons returned served on deft. John J. Podraza,
3-19-59 (2.40).

4-2-59 Summons returned served on Robert V. Dermody,
3-27-59 (2.50).

Summons returned served on Dean Bainbridge,
3-31-59 (5.00).

Summons returned served on Thomas F. Hicks,
3-31-59 (6.00).

Summons returned served on William Padjen,
3-31-59 (3.20).

4-8-59 Abraham W. Brussell, 318 W. Randolph, Chicago,
Ill. and David Cohen, 2102 Broadway, East Chicago,
Ind. enter appearance for defendants.

4-8-59 Parties file stipulation that defts. time to answer
be extended. Order entered granting defts. time to
answer to and including April 24, 1959 (SE). Swygert,
J. (counsel notified).

4-9-59 Summons returned served on Charles Pacurar,
4-6-59 (6.00).

4-23-59 Parties file stipulation for ext. of time to plead.

Order entered ext. time for defts. to plead, to and
incl. 5-8-59 (SE). Swygert, J. (Counsel notified).

5-8-59 Defendants file motion to stay action with exhibit
A (affidavit) attached. Defendants file alternative
motions to dismiss the action, strike the complaint or
make the complaint more definite and certain.

Cert. of mailing filed.

5-11-59 Parties file stipulation (letter form) extending
time to file brief in support of motions, to Wed., May
13, 1959.

[fol. 5] 5-13-59 Brief in support of defendants' Motions
filed by defts.

5-18-59 Wm. E. Rentfro, P.O. Box 2812, Denver, Colo-
rado, enters appearance as co-counsel for all defts.

- 5-27-59 Stipulation for extension of time in which to file a brief extended to June 15, 1959, filed. Order entered thereon (SE). Swygert, J.
- 6-12-59 Stipulation filed extending time for pltf. to file brief from June 15, 1959 to and including June 22, 1959.
- 6-15-59 Order entered granting ext. of time in which pltf. may file brief in support of complaint and in opposition to defts. motions to stay action and dismiss complaint to and including 6-22-59 (SE). Swygert, J. (copies to counsel).
- 6-19-59 Parties file stipulation that time within which pltf. may file brief in support of the complaint and in opposition to the motions to stay and motion to dismiss the action be extended from June 22, 1959 to and incl. June 29, 1959.
- 6-22-59 Order: The time in which plaintiff may file a brief in support of the complaint and in opposition to defts. motions to stay the action, and dismiss the compl. is ext. to and incl. June 29, 1959 (SE). Swygert, J. (counsel notified).
- 6-29-59 Brief of plaintiff filed in opposition to defendants' motions to dismiss action, strike complaint or make the complaint more definite and certain.
- 7-9-59 Parties file stip. re filing briefs.
- 7-9-59 Order: Pursuant to stipulation of parties time within which defendants shall have to file a reply brief on their pending motions is extended to Aug. 15, 1959 (SE). Swygert, J. (copies to counsel).
- [fol. 6] 8-17-59 Parties file stipulation for ext. of time for filing reply brief. Order: Pursuant to stipulation of parties, time within which defendants shall file reply brief on their pending actions is hereby extended to and incl. 8-22-59 (SE). Swygert, J. (copies to counsel).
- 8-22-59 Reply brief of defendants filed.

11-30-59 Pltf. files Motion for Discovery and Production of Documents Under Rule 34.

12-15-59 Parties appear by counsel at hearing on the pending motions, excepting plaintiff's motion under Rule 34. Argument heard and the motions are taken under advisement. Parties are granted 10 days from this date within which to file any supplemental memos.

12-22-59 Memo in support of Count III of complaint filed.

1-14-60 Supplemental brief of defendants filed.

3-12-60 Defendants' alternative motions of May 8, 1959, to dismiss the action, strike the complaint, or make more definite, and the motion of May 8, 1959, to stay the action, are each of them hereby denied (SE). Swygert, J. (copies sent).

3-18-60 Parties file stipulation that order be entered allowing the filing of motions to amend and to vacate and that hearing on said motions be continued until the return of Judge Luther M. Swygert; that all proceedings herein be maintained in status quo until the entry of a final order by Judge Swygert. So Ordered (SE). Robert A. Grant, Judge.

Defendants file motion to amend the order entered 3-12-60 with notice and affidavit attached thereto.

Defendants file motion to vacate order of 3-12-60, with notice and affidavit in support attached thereto.

5-3-60 Parties present by counsel at hearing on defendants' motion to vacate order or in the alternative, to [fol. 7] amend the court's order of 3-12-60. Hearing also had on plaintiff's motion to require defendant to produce under Rule 34. Defendants file a memo brief. Argument heard and the plaintiff requests and is granted 2 weeks within which to file an answer brief. Thereafter the defendants are granted 7 days within which to file any reply brief. Motions taken under advisement pending the filing of briefs.

5-24-60 Plaintiff files memo with affidavit and suggested form of order attached.

6-7-60 Defendants' reply memorandum in support of its pending motions filed.

6-23-60 Order entered granting motion to produce under Rule 34. (SE). Swygert, J. (copies to counsel).

6-23-60 Order: Upon rehearing, it is hereby ordered, decreed and adjudged that the order of March 12, 1960, be and hereby is vacated. It is further ordered, decreed, and adjudged that the motion to dismiss count I be, and hereby is, denied. It is further ordered, decreed and adjudged that the motions to dismiss counts II and III be, and hereby are granted. It is further ordered, decreed, and adjudged that the motion to stay be and hereby is denied. (SE). Swygert, J. (copies to counsel). Memorandum of decision entered thereon (SE). Swygert, J. (copies to counsel).

7-5-60 Parties present by counsel and file the following motions. 1. Plaintiff's motion to find that there is no just reason for delay; 2. Plaintiff orally moves the court to permit appeal pursuant to Sec. 1292(b) 28 U. S. C. (3). Defts. motion to amend order of June 23, 1960. Notice of motion to amend order of June 23, 1960. Hearing held on above motions and court grants plaintiff's motion to find no just reason for delay. (Order entered (SE). Swygert, J.) Plaintiff's [fol. 8] motion to permit appeal pursuant to Sec. 1292(b) 28 U. S. C. granted. (Order signed.) (SE) Swygert, J. Motion filed July 5, 1960 by defendants, to amend order of June 23, 1960, is granted.

7-21-60 Plaintiff files Motion to Vacate Orders of July 5, 1960 for purpose of consideration of Motions for leave to file an amended count II and for reconsideration of the court's ruling dismissing count III.

Plaintiff files motion for leave to file amended Count II and motion for reconsideration of the court's ruling dismissing count III. Parties present in court by counsel, for hearing on motions filed by plaintiff this date. (H.I.) Arguments heard. Order per form (SE). Swygert, J. (copies to counsel) Motion to va-

cate orders granted; motion to file amended complaint and for reconsideration of court's ruling dismissing count III denied.

7-28-60 Defendant files motion for the court to determine and rule that there is no just reason for delay and direct the entry of final judgment or order denying the aforesaid Motion to Stay pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Defendants file motion for leave pursuant to 28 U. S. C. 1292(b) to file an interlocutory appeal, and to direct the entry of a final order denying defendants aforesaid motion to dismiss or strike count I of the complaint, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Notice of motions filed.

7-28-60 Parties appear by counsel. Motion for entry of final judgment pursuant to Rule 54(b) relating to defendants' motion to stay pending arbitration heard. Motion granted. Court now determines and rules that there is no just reason for delay and therefore directs the entry of a final order denying the motion to stay. Judgment entered accordingly.

[fol. 9] Defendants' motion for an order pursuant to 28 U. S. C. Sec. 1292(b) for permission to file an interlocutory appeal from the court's denial of defendants' motion to dismiss and to strike Count I of the complaint, heard. Motion denied. It is stipulated by counsel that pending the appeal of the orders granting defendants' motions to dismiss Counts II and III, no assignment for trial will be made of Count I. Stipulation approved. Order to amend order of July 21, 1960 entered by agreement. Amended order entered (SE). Swygert, J. (copies of the foregoing entry to counsel).

8-6-60 Plaintiff files notice of appeal together with stipulation of both parties that plaintiff need not post any bond for the costs on appeal. (Copy mailed to Brusell.) (Letter certifying filing to all attorneys.)

8-19-60 Defendants file notice of appeal. (Clerk's cert. of filing forwarded to all counsel.)

Parties file stipulation waiving bond for costs of appeal.

8-26-60 Order entered before Judges Hastings, Knoch and Castle granting petition of plaintiffs (filed in CCA) to appeal pursuant to Title 28 U. S. C. Sec. 1292(b).

[fol. 12]

IN THE UNITED STATES DISTRICT COURT

COMPLAINT—Filed March 12, 1959

Now comes Sinclair Refining Company, a corporation, and for its causes of action against the defendants, Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike [fol. 13] Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, respectfully shows:

Count I.

1. Plaintiff is a corporation and an employer in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and the jurisdiction of the Court on this Count depends on said section.

2. Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "International"), is a voluntary association and a labor organization representing employees in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and at all times material hereto, together with various of its component local unions, has been, and now is, the recognized collective bargaining agent for all of that

class of employees at refineries operated by plaintiff at various places throughout the country (except at Hartford, Illinois), as more particularly described and limited in Article I of Exhibit A attached hereto, made a part hereof, and more particularly hereinafter referred to.

3. Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "Local Union"), is a voluntary association and a labor organization representing employees in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185. It is chartered by and is a component of the International. At all times material hereto the Local Union, together with the defendant International Union, has been, and now is, the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to a refinery operated by plaintiff at East Chicago, Indiana, the internal constituency of which bargaining unit is more specifically described in Article I of Exhibit A hereinafter referred to.

4. The International, with the consent of the Local Union (and other local unions), and acting as its agent, and for and on behalf of it and its members, from time to time makes contracts with plaintiff for and on behalf of Local 7-210 and its members and for other local unions of the said International and their members employed by plaintiff at other locations. On or about August 8, 1957, pursuant to the national policy to avoid industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, plaintiff and said International Union, acting by and with the authority of the Local Union and its members, entered into a written contract regarding rates of pay, wages, hours of employment and other working conditions for all persons within the bargaining unit represented by the Local Union, said contract to have a term from June 15, 1957 to June 14, 1959, full, true and correct copy whereof is annexed hereto marked "Exhibit A" and made a part hereof. Plaintiff alleges that although the Local Union is not a signatory to the said contract, it is a

party thereto, that it and its members have ratified, approved and worked under it, have accepted both benefits and obligations thereof, and have accepted, adopted and ratified it as fully as though the said Local Union was a signer thereof, and that the Local Union administers the said contract for and on behalf of the affected employees.

5. Plaintiff shows that Article III of the said contract provides:

[fol. 15]

"Article III.

Strikes-Lockouts-Slowdowns-Work Stoppages.

1. Employer agrees that during the term of this Agreement there shall be no lockouts.

2. Union agrees that during the term of this Agreement there shall be no slowdowns for any reason whatsoever.

3. Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

(2) For any other cause, except upon written notice by Union to Employer provided:

(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice."

6. Plaintiff shows that the definition of a grievance under Article XXVI of said contract is:

"1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations."

[fol. 16] The said Article further provides:

"Grievance Procedure.

It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed: [Then follow provisions calling for meetings and conferences between the parties leading to binding arbitration as follows.]

• • • • •

7. If such decision [by the Director of Industrial Relations thereon] is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after formation of such Board. • • •

• • • • •

9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. • • •"

7. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but that on said days, in violation of Article III of the said contract, said International and said Local Union, by their officers, committeemen and other duly authorized and acting agents, caused a strike or work stoppage by approximately 999 of the approximate 1700 em-

ployees within the bargaining unit at said refinery over asserted pay claims on behalf of three members of the said bargaining unit aggregating \$2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

8. Plaintiff shows that the work stoppage of February 13-14, 1959 greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket ex-[fol.17] penses directly caused by the aforesaid illegal stoppage were, to-wit, \$12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against said International and said Local Union for \$12,500 and costs.

Count II.

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains its principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Count depends, it is a citizen of Maine and of New York and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of the National Labor Relations Act, as amended.

2. The defendants Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, and A. F. Schilling (hereinafter sometimes referred to as "individual defendants") are, and at all times material hereto were, employees of the plaintiff at a refinery which it operates at East Chicago, Indiana. Each said individual defendant is a citizen of Illinois or Indiana and none are citizens of Maine or New York. Each of the defendants in this paragraph named is, and at all times material hereto was, a committeeman of the Local Union and an agent of the International charged with represent-

ing and protecting their interests and those of their members in various sections or departments of plaintiff's refinery at East Chicago, Indiana.

[fol. 18] 3. The amount in controversy herein exceeds the sum or value of \$10,000 exclusive of interest and costs.

4. Plaintiff adopts as and for the allegations of this paragraph 4 the allegations of paragraph 2 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 3 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 4 of Count I.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but on said days the individual defendants and each of them, contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by the said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated in a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit represented by the Local Union at said East Chicago refinery over asserted pay claims on behalf of three members of the said bargaining unit aggregating \$2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

10. Plaintiff shows that the work stoppage of February 13-14, 1959, greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket

expenses directly caused by the aforesaid illegal stoppage, [fol. 19] induced, fomented and assisted by the individual defendants as hereinabove alleged, were, to-wit, \$12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against the individual defendants for \$12,500 and costs.

Count III.

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains its principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Court depends with respect to the individual defendants, plaintiff is a citizen of Maine and of New York, and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of Title 29, United States Code, Section 185, and the jurisdiction of the Court on this Count depends on said section as to the labor organization defendants hereto as well as upon diversity.

2. The amount in controversy herein exceeds the sum or value of \$10,000, exclusive of interest and costs.

3. Plaintiff adopts as and for the allegations of this paragraph 3 the allegations of paragraph 2 of Count I.

4. Plaintiff adopts as and for the allegations of this paragraph 4 the allegations of paragraph 3 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 4 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 2 of Count II.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff alleges that notwithstanding said contract, [fol. 20] and its mandatory provision that when a grievance arises the procedures therein culminating in binding arbi-

tration "must be followed" if the grievance is not otherwise settled under the grievance procedure of said contract, and that there can be no strikes or work stoppages during the term of the agreement because thereof, the defendants, confederating and conspiring together to embarrass plaintiff, to cause it expense and damage and to secure the settlement of asserted grievances by means other than those provided by the contract, repeatedly fomented, abetted, caused, participated in, and brought about work stoppages at the said East Chicago refinery, including therein, but without limiting the generality of the foregoing, the following:

(a) On or about July 1, 1957, six employees assigned to the #810 Crude Still stopped work in support of an asserted grievance involving the removal of Shift Machinists from the #810 Still area;

(b) On or about September 17, 1957, all employees employed in the Mason Department refused to work on any shift during the entire day; the entire Mechanical Department refused to work from approximately noon until midnight; the employees of the Barrel House refused to work from the middle of the afternoon until midnight; a picket line was created which prevented operators from reporting to work on the 4:00 P.M. to midnight shift, all in support of an asserted grievance on behalf of five apprentice masons for whom insufficient work was available to permit their retention at craft levels.

(c) On or about March 28, 1958, approximately 73 employees in the Rigging Department refused to work for approximately one hour in support of an asserted grievance that riggers were entitled to do certain work along with machinists.

(d) On or about May 20, 1958, approximately 24 employees in the Rigging Department refused to work for 1¾ hours in support of an asserted grievance that riggers were entitled to do certain work along with boiler-makers.

(e) On or about September 11, 1958, approximately 24 employees in the Rigging Department refused to work

for approximately two hours in support of an asserted grievance that pipefitters could not dismantle and remove certain pipe coils without riggers being employed on the said work also.

(f) On or about October 6 and 7, 1958, approximately 43 employees in the Cranes and Trucks Department refused to work for approximately eight hours in support of an asserted grievance concerning employment by the Company of an independent contractor to operate a contractor owned crane.

(g) On or about November 19, 1958, approximately 71 employees refused to work for approximately $3\frac{3}{4}$ hours in the Boilermaking Department in support of an asserted grievance that burners and riggers would not dismantle a tank roof without employment of boilermakers at the said task.

(h) On or about November 21, 1958, in further pursuance of the asserted grievance referred to in subparagraph (g) preceding, the main entrance to the plant was picketed and barricaded, thereby preventing approximately 800 employees from reporting for work for an entire shift.

(i) On or about February 13 and 14, 1959, approximately 999 employees were induced to stop work over an asserted grievance on behalf of three riggers that they should not have been docked an aggregate of \$2.19 in their pay for having reported late to work. Plaintiff shows that with respect to at least nine of the individual defendant committeemen involved in the stoppage of February 13 and 14, 1959, the Local Union, after the event had occurred and [fol. 22] while fully aware of the illegality thereof, further ratified and condoned the illegal conduct by paying at least nine of the said individual committeemen for all the time they lost from work through participation in the illegal activity.

10. Plaintiff alleges that in each of the instances referred to in subparagraphs (a) to (i) inclusive of paragraph 9 hereof, the asserted grievance was a grievance which could, and if valid should have been submitted for

disposition, and if necessary to final arbitration, under the grievance provisions of the contract.

11. Plaintiff alleges that in each of the instances referred to in subparagraphs (a) to (i) inclusive of paragraph 9 hereof, losses, damages and out-of-pocket expenses were caused to it in substantial amounts which are incapable of precise ascertainment because the damages flowing directly from and as a consequence of a work stoppage in a refinery affect so many departments and costly operations that it is impossible to assess them accurately; that said damages herein referred to greatly exceed \$10,000 and the value of uninterrupted performance hereafter under the contract Exhibit A is worth greatly in excess of \$10,000 exclusive of interest and costs.

12. Plaintiff alleges that the pattern of repeated violations of the contract as herein alleged shows either that the defendants do not regard the provisions of the contract requiring grievances to be submitted to the grievance procedure, including, if necessary, arbitration, to be valid and binding, or, in the alternative, repeatedly, consistently and deliberately violated them. Unless the Court shall declare the no-strike and grievance provisions of the contract valid and enforceable, and unless defendants are restrained and enjoined, they will continue their illegal course of conduct and subvert the provisions of the contract forbidding strikes over grievances and requiring that they [fol. 23] be handled through the grievance procedure by resorting to further stoppages. Plaintiff shows that it has no plain, simple and adequate remedy at law because at law it would be forced to resort to a multiplicity of actions in which full and complete damages would be impossible of assessment, nor would such inadequate remedies at law achieve the national policy of avoiding unnecessary interruption of production of goods for commerce and of commerce.

Wherefore, plaintiff prays:

1. That this Court declare the rights of the parties in the premises under Articles III and XXVI of the contract

between the parties dated August 8, 1957, and that the provisions of said Articles are legal, binding and enforceable; that any strike or stoppage of work in any way in support of any grievance, or alleged grievance, by any member of the bargaining unit at plaintiff's East Chicago, Indiana refinery covered by said contract, is illegal, and that all such asserted grievances, if rectification thereof is desired, must be prosecuted under the procedures prescribed by the said contract; that any economic action, including strikes, stoppages, slowdowns, or any other disruption of, or interference with, production, normal operations or normal employment at said refinery to secure disposition or settlement of such asserted grievances, is illegal, is violative of the contract and of public policy and may, and should be enjoined.

2. That the defendants, and each of them, their agents, servants, counselors, and all to whom notice hereof may come, be enjoined and restrained, preliminarily at first, and thereafter permanently, from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana refinery covered by the contract between the parties dated August 8, 1957, in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions.

3. That the plaintiff have such other relief as may be meet, including its costs most wrongfully sustained.

George B. Christensen, Timothy P. Galvin, Attorneys
for Plaintiff.

Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago, Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana, of Counsel.

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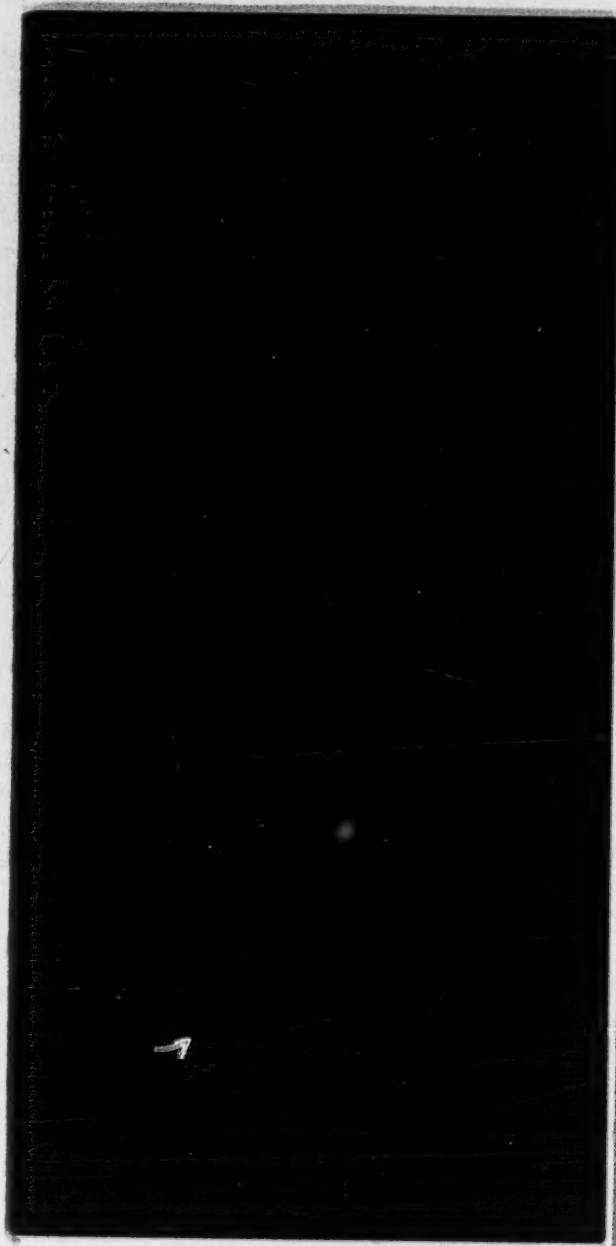


EXHIBIT A

ARTICLES OF AGREEMENT

between

Sinclair Refining Company,
Sinclair Oil & Gas Company,
Sinclair Pipe Line Company, and
Sinclair Research Laboratories, Inc.

(each hereinafter referred to as "Employer")

and

Oil, Chemical and Atomic Workers International Union AFL-CIO, (hereinafter referred to as "Union") acting as the sole bargaining agency in respect to wages, hours and working conditions for the employees (as hereinafter defined) of the Employer engaged in the operations as set forth in Article I hereof.

Whereas the parties to this agreement intend to provide an increasing spirit of harmony between Employer and employees,

Now, Therefore, it is understood and agreed as follows:

ARTICLE I**Recognition**

1. The Employer recognizes the Union as the sole Collective Bargaining Agency for the employees covered by this working agreement. The Employer and the Union agree that the words "employee" or "employees" as used in this working agreement shall mean the employee or employees engaged in Refining as conducted by Sinclair Refining Company, except at its Wood River Refinery located at Hartford, Illinois; Pipe Line operations as conducted by Sinclair Pipe Line Company; the development

and/or production of crude oil and/or natural gasoline and the purchase and marketing of crude oil by Sinclair Oil & Gas Company; and the aforementioned activities of other companies which may hereafter be acquired. This agreement shall apply to such employees who are covered by this agreement and are employed by Sinclair Research Laboratories, Inc. The Union is to bargain collectively for such employees regarding rates of pay, wages, hours of employment and other working conditions. The following employees, however, are excluded from this bargaining unit:

- (a) Supervisory employees—Supervisory employees are defined as employees of the Employer who act in a supervisory capacity and have authority to hire, or promote, or discharge, or discipline, or otherwise effect a change in the status of employees subject to their supervision, or effectively recommend such action. It is understood and agreed that stillmen, treaters, gang leaders, pipe line telegraphers, pipe line teletype operators and pipe line dispatchers and other similar classifications are not to be considered supervisors.
- (b) Executive, administrative and professional employees.
- (c) Clerical employees.
- (d) Technical employees.

ARTICLE II

Term of Agreement

1. This agreement shall become effective June 15, 1957, and continue to June 14, 1959 and thereafter unless terminated by either party on sixty (60) days' written notice to be given by the party electing to terminate. Within said period of sixty (60) days the parties hereto shall confer for the purpose of mutually considering upon what terms and conditions this agreement may be amended instead of terminated.

EXHIBIT A**ARTICLE III****Strikes-Lockouts-Slowdowns-
Work Stoppages**

1. Employer agrees that during the term of this Agreement there shall be no lockouts.

2. Union agrees that during the term of this Agreement there shall be no slowdowns for any reason whatsoever.

3. Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

(2) For any other cause, except upon written notice by Union to Employer provided:

(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice.

ARTICLE IV**Classification Changes-Retracking
Privileges**

1. If work of a higher paid classification is temporarily or permanently required of

any employee, he shall receive the wage of the position to which he has been assigned for as long a time as he occupies that position.

2. If any employee is temporarily shifted to any classification paying a smaller wage than his regularly assigned classification, no reduction in wages shall be made unless such employee is shifted at his own request.

3. In cases where an employee's services are no longer required under his classification, he may retrack to any other department in which he holds seniority, or to the labor department, in the manner governed by Article V.

4. Any employee demoted from his regularly assigned classification (except when such demotion is made at the employee's request or is incident to an extension of the work week beyond the hours of work existing at the date of this agreement) shall receive the rate of pay of the classification from which he is demoted for a period of two (2) weeks from the date of the demotion. This section is not applicable to demotions for cause.

5. When practicable all regular jobs on operations shall be covered by a full crew at all times.

6. All work peculiar to any craft or classified employment (job) shall be done by employees regularly assigned to that craft or classification (job) except in cases of extreme emergency. No arbitrary changes in present classifications will be made with the purpose or result of reducing the pay of any classified job.

7. No foreman or other supervisory employee shall perform duties customarily as-

EXHIBIT A

signed employees covered by this agreement, except:

- (a) In emergencies.
- (b) In connection with the instruction of an employee.
- (c) In the interest of avoiding an accident.

ARTICLE V**Seniority**

1. All employees for the first forty-five (45) day period of their employment are on probation and their services may be terminated during that time at the Employer's discretion, provided, however, this section shall not abrogate such employees' rights of promotion and demotion.

2. In filling vacancies in the higher classifications, the Employer accepts the principle of exercising due regard for length of service, taking into account ability and efficiency; and the practice will be followed of promoting those who, by length of service and ability, shall be deemed to have earned promotion; a reasonable breaking-in period, of not less than five working days, shall be provided by Employer.

3. Seniority shall be strictly adhered to in both plant and department so long as the employee has ability and executes the job in a safe and workmanlike manner. Any employee starting in the labor department and advancing in any of the various departments shall hold his labor department seniority, but in no case can he retrack to the labor department and rank above an employee who has longer plant service. In the event that an employee be hired or transferred to a department for any particular or temporary service he shall in no case hold any seniority right over employees having longer service. Employees' service seniority

shall immediately start upon employment but an employee's department seniority shall be retroactive only to date of transfer to said department. It is the spirit of this Article that an employee shall start his employment in the labor department and advance through the various departments and hold seniority in the labor department.

4. Whenever in the estimation of management it is deemed necessary to deviate from seniority in making a promotion, this deviation shall, prior to permanent placement of the employee in the position in question, be made the subject of immediate conference with Workmen's Committee for the purpose of arriving at a satisfactory settlement.

5. Should a grievance arise under the preceding paragraph, said grievance shall be presented to management in writing within fourteen (14) days after such deviation is made.

6. If any employee is laid off through reduction of forces or for any other reason beyond his control and re-employed within one (1) year, such lay-off shall not affect his seniority status.

7. (a) In each refinery the last employee hired shall be the first employee laid off, provided a qualified replacement is available, subject, nevertheless, to the provisions of subsection (b) and (c) hereof.

(b) In the event of a permanent shut-down of a refinery or a permanent major curtailment thereof, the employees affected who have been employed for a period of two (2) or more years, shall have the right to continue employment, as hereinafter defined, at other refineries, or to accept lay-off and receive payments of all benefits due under the provisions of this Agreement. An

EXHIBIT A

employee so electing to continue his employment may exercise his service seniority to displace that employee with the least service seniority in the lower classification of the over-all refinery operations and he shall thereafter be entitled to promotional, demotional and other seniority rights in accordance with the seniority rules existing at his new place of employment. When any such permanent shutdown or permanent major curtailment is contemplated, the parties hereto shall meet not less than sixty (60) days prior to such actual shutdown or major curtailment, and mutually agree upon a detailed and complete method for placing the provisions of subsection (b) and (c) hereof into effect. This section shall not, however, be construed as changing in any way the existing rights of the Employer or employees regarding termination of employment or lay-offs except as provided herein.

If there is doubt as to whether a curtailment involving the layoff of employees should be classified as a permanent major curtailment, this question shall be referred to the President of the International Union and the Director of Industrial Relations for the Sinclair Companies, or their designees, who will meet for the purpose of deciding whether such curtailment should be classified as a permanent major curtailment within the meaning of this subsection (b).

(c) When a refinery employee with two (2) or more years of seniority is transferred to a different refinery, under the provisions of section (b) hereof, he shall be entitled to promotions and demotions on the basis of his plant seniority in the plant to which he is so transferred and according to the seniority rules in effect at that plant. However, he shall be entitled to exercise his full Company seniority as protection against a lay-off.

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8. In Sinclair Research Laboratories, Inc. the last employee hired shall be the first employee laid off; provided a qualified replacement is available.

9. In each seniority district of Pipe Line operations, the last employee hired shall be the first employee to be laid off, provided a qualified replacement is available. An employee scheduled to be laid off in one seniority district of Pipe Line operations shall have the right of displacing the most junior employee in the Laborer and Pipeliner classifications throughout the entire pipe line system, provided the employee to be displaced has less service seniority than the employee scheduled to displace him or the right to accept lay-off and receive payment of all benefits due under the provisions of this working agreement.

10. In each seniority district in Producing operations, the last employee hired shall be the first employee to be laid off, provided a qualified replacement is available. An employee scheduled to be laid off in any seniority district of Producing operations shall have the right to displace the Roustabout that is most junior in all of the other Producing Divisions, if such junior Roustabout has less service than the employee scheduled to displace him, provided he has the ability to do so. Should an employee scheduled for lay-off not elect to exercise his right to continued employment, as provided above, he may instead accept lay-off and receive payment of all benefits due under the provisions of this working agreement.

11. In Pipe Line operations, Producing operations, in each refinery or Sinclair Research Laboratories, Inc., the last employee laid off shall be the first employee re-hired if qualified, when taking on more employees. Any employee laid off shall be given notice

EXHIBIT A

of opportunity for re-employment at his last known address and the appropriate Workmen's Committee notified of such employment opportunity. Failure of an employee to report for work within ten (10) days after notice of opportunity for reemployment as set forth herein shall constitute resignation. In extraordinary cases where the employee is unable to return within said ten (10) day period by reason of emergencies such as but not limited to authentic hospitalization and family illness, the Employer will allow the employee sufficient time to report, subject to the time limitation set forth in Section 6 of this Article. This paragraph shall not be construed as requiring the Employer to re-employ any former employee who has been laid off more than one (1) year or who has not had a total of forty-five (45) days' employment. The preceding sentence shall not be construed to deprive any employee of his rights to promotion, demotion or lay-off on the basis of seniority. In any cases of allegation of discrimination arising under this clause, such cases will be made the subject of immediate investigation by the President of the Employer or someone designated by him. This article is subject to the application of Article XXVI.

12. Seniority lists shall be compiled and be kept available at all reasonable times and the workmen's committee shall also have access to daily time reports to verify disputed seniority lists and service records. A copy of such seniority lists shall be furnished the chairman of the Workmen's Committee semi-annually during the months of September and March of each year.

13. If it is desired by either party to this Agreement, local Workmen's Committees shall meet with local managements for the purpose of arriving at mutually satisfactory applications, working rules and under-

standing of the seniority rule, giving consideration to job, and/or department, and/or plant, and/or service seniority, and such committee may be accompanied by an officer, district director or international representative of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, if it so desires. In the event of failure to agree, such disputes may be submitted to arbitration under the terms of this Agreement.

ARTICLE VI

Hours of Work

1. Hours of work shall not exceed forty (40) in any one work week, or eight (8) in any one day, or sixteen (16) in any two consecutive days, except in the case of emergency. It is agreed, however, by the parties hereto that the above mentioned hours may, during the period of this agreement and subject to the following conditions, be modified to the extent that hours of work shall not exceed forty (40) in any one work week, nor more than seventy-two (72) in any two consecutive work weeks, nor more than eight (8) in any one work day, or sixteen (16) in any two consecutive work days, except in case of emergency.

2. In the event the aforementioned modification is desired, either party may give written notice to the other party that a general dispute exists within the meaning and intent of Article XXVII hereof. Within thirty (30) days of the receipt of such written notice, the parties shall meet for the purpose of discussing such proposed changes, in an effort to reach an agreement. If an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified above, the Union shall have the right to exercise its prerogative by serving the fifteen (15) days' notice

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as provided in Article III, Section 3, subdivision 2 (b) of this Agreement.

3. In cases of any other changes affecting working hours desired either by employees or the Employer, such changes shall be explained, reasons therefor given and fully discussed, and any objections of employees fully considered before such changes become effective. In no event shall such changes become effective in less than seven (7) days after the change has been discussed in conference with the Workmen's Committee.

ARTICLE VII**Overtime**

1. Hours worked in excess of eight (8) per day and in excess of forty (40) in any work week, shall be compensated for at the rate of time and one-half ($1\frac{1}{2}$) the regular rate of pay. (Subject, nevertheless, to the modification provisions provided in Article VI, Sections 1 and 2.)

2. All employees shall receive time and one-half ($1\frac{1}{2}$) their regular rate of pay for all work performed beyond their regular quitting time and for all work performed in advance of the regular starting time. It is understood that where an employee is required to begin work three (3) hours or more in advance of his regular starting time, it shall be considered a change in his working hours coming under the rules stated in Section 6 of this Article.

3. Whenever an employee is called for duty outside of his regular working hours he shall receive pay for actual time worked at one and one-half ($1\frac{1}{2}$) times his regular rate with a minimum of four (4) hours' pay at his regular rate. In the event no work shall be required of an employee called out, he shall be compensated for three (3) hours at his regular rate of pay.

4. Whenever an employee is required to report for work as scheduled and then shall not be required to work, or shall work less than three (3) hours, he shall receive pay for not less than four (4) hours' work. If three (3) hours or more are worked compensation shall be paid for at least a full day.

5. Employees shall be compensated at double their straight time rate of pay for—

- (a) All work performed on the seventh consecutive day worked within the work week, and
- (b) All hours of work performed on the seventh day which are in excess of 48 hours worked during the work week.

Except when an unworked paid holiday falls on an employee's regularly scheduled day off the counting of days and hours worked shall include unworked paid holidays and each day during which more than four (4) hours of work have been performed. If, however, an employee absents himself for a portion of a day without justifiable cause, then that day shall not be counted in the computation of seven (7) consecutive days of work.

6. When employees' work hours are changed, they shall receive time and one-half ($1\frac{1}{2}$) for the first day worked outside of their regular hours with the following exceptions:

- (a) In course of regular shift changes.
- (b) When employees are promoted to a higher rated classification to fill a permanent job vacancy.
- (c) Where the change due to change in lunch period does not alter the quitting time more than one hour.
- (d) Where employees' working hours are changed by reason of vacation relief work.

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- (e) Where the changes are due to employees being granted Union or personal leaves of absence. For the purpose of this sub-section jury service, personal illness or funeral allowances shall not be considered as personal leave of absence.
 - (f) Where the changes are due to demotions, the Company will pay either the demotion pay or the time and one-half ($1\frac{1}{2}$) premium pay, whichever is the greater.
7. If any employee is kept off his regular scheduled working hours for seven (7) or more calendar days, he shall receive time and one-half ($1\frac{1}{2}$) for the first day worked when returned to his former regular hours, or when put on a different schedule of hours except where the change is made under conditions listed in Section 6 of this Article.
8. When employees lose time and pay within a pay period as a result of shift changes or changes in hours, the Employer will compensate such employees for the net amount they lose.
9. Any employee required to work on his regular day off shall receive time and one-half ($1\frac{1}{2}$) for work performed on that day. The crews now regularly designated to work on Saturday may be maintained.
10. Any employee who is required to work overtime past a regular meal time shall, at the Employer's expense, be supplied with a meal. Additional meals shall be supplied at each five (5) hour interval thereafter as long as the employee works overtime. The employee shall be afforded an opportunity on Employer's time to eat the meal so supplied at the time he is deemed to have earned the same, or as soon thereafter as the condition of the work permits. Workers' meal times are to be determined

by local committees and are to be incorporated as a part of local supplementary rules.

11. (a) The payment of time and one-half ($1\frac{1}{2}$) covering the following shall be offset against overtime for hours worked in excess of forty (40) in the work week:

- (1) Callout work.
- (2) Work performed in advance of regular starting time or beyond regular quitting time.
- (3) Hours worked in excess of eight (8) per day.
- (4) Employer-called conferences as per Article XXV of this Agreement.

(b) The following shall not be offset against overtime payments for hours worked in excess of forty (40) in the work week:

- (1) Change of hours.
- (2) Work performed on paid holidays.
- (3) Double time payable on seventh (7th) day.
- (4) Work performed on regular day off.

(c) There shall be no pyramiding of rates for the same day worked and if two (2) or more rates are applicable for the same hours worked, the higher rate only shall be paid.

12. Employer will, insofar as the exigencies of the business permit, distribute overtime uniformly among all employees within each classification concerned. Records of overtime worked will be made available to employees and the Workmen's Committee upon request. Local representatives of the parties will confer to determine what records are suitable for the purposes of this section.

The overtime records of day and mechanical employees in the refineries will be posted at quarterly intervals.

EXHIBIT A

13. No employee shall be required to take time off from his regularly scheduled work week for the purpose of offsetting overtime.

ARTICLE VIII**Shift Operations****Definitions**

1. All work performed by the employees covered under the terms of this Agreement shall be done by employees termed shift employees and/or day employees. The term "shift employees" as used herein shall be deemed to mean men who are employed for specific periods in the course of operations regularly carried on during two or more shifts per day; all other employees shall be designated as "day employees."

2. It is recognized that it is necessary to work certain day employees on Sundays and holidays in connection with continuous operations, and such day employees who are regularly scheduled for holiday and Sunday work will be classed as shift employees insofar as the application of overtime is concerned. It is agreed that the local committees and management shall prepare definite lists of such jobs for each plant or operation, which lists shall include regularly classified dock loading and cleanout crews. Such list when mutually agreed to by the parties shall be effective.

Shift Differentials

1. All hourly-rated employees regularly assigned to the second (evening) shift shall be paid the differential in effect which shall be included in the base rates of pay for purposes of computing overtime payments, vacation payments, sick benefit allowances, demotion pay, severance pay and travel time.

2. All hourly-rated employees regularly

assigned to the third (night) shift shall be paid the differential in effect which shall be included in the base rates of pay for purposes of computing overtime payments, vacation payments, sick benefit allowances, demotion pay, severance pay and travel time.

3. In the case of double-overs and double-backs (these are defined as employees who have completed their regularly scheduled working hours and who are held over or assigned to work another shift occurring within twenty-four (24) hours from the start of their regularly scheduled hours) these employees shall be paid the shift differential in effect for the shift so worked (which shall be included in the base rates of pay).

4. All hourly-rated employees who are not regularly assigned to shift work and who are required to work one (1) hour or less during or into said shift hours shall not be paid shift differentials even though they may work overtime into a shift or may be called out to work during such shift hours. However, all such employees who are required to work for more than one (1) hour during or into said shift hours shall be paid the applicable shift differential in addition to their base or overtime rates of pay.

ARTICLE IX

Vacations

1. Each employee after twelve (12) months of continuous service shall be entitled to two (2) weeks' vacation with full pay. Each employee after ten (10) years of continuous service shall be entitled to three (3) weeks' vacation with full pay. Each employee after twenty (20) years of continuous service shall be entitled to four (4) weeks' vacation with full pay. When an em-

EXHIBIT A

employee's granted vacation period includes one of the herein specified unworked paid holidays for which the employee would have been compensated had he not been on vacation, the employee is to be paid for an extra day at his vacation rate of pay.

2. Continuous service is to be computed from the employee's date of employment. Vacation allowances are not cumulative from year to year.

3. Any employee whose services are terminated shall receive earned vacation pay as computed in paragraph one of this Article on the pro-rata basis of one-twelfth (1/12th) of such pay for each month worked beyond his anniversary date of employment.

4. Vacation allowance or pay is to be figured on the basis of the employee's regularly scheduled work week exclusive of any overtime, and his average hourly straight time rate paid during the four (4) preceding work weeks in the case of refineries and Sinclair Research Laboratories, Inc. and in pipe line and producing operations the two preceding pay periods prior to the beginning of the employee's vacation.

5. Any employee laid off through reduction of forces or for any reason beyond his control and re-employed within one (1) year shall be considered a regular employee in regard to vacation rights but shall forfeit one-twelfth (1/12th) of his vacation pay for each month lost during the year. No employee shall be forced to take his vacation due to a shutdown.

6. Time lost through absences during which an employee is not in receipt of wages shall be accumulated, and, if in the aggregate such absences equal or exceed twenty-two (22) scheduled work days, an em-

ployee's vacation allowance or wages shall be reduced one-twelfth (1/12th) for each twenty-two (22) work days of absence. This provision, however, shall not apply to:

- (a) Processing and handling of employee grievances and arbitration proceedings, or
- (b) Attending annual Union convention, Employer national or supplemental contract negotiations, or
- (c) Leaves of absence as covered by Article XXIX, Section 1, of this Agreement, or
- (d) The waiting period provided in the Sickness and Accident Disability Benefits Plan in "Appendix".

7. After having established vacation rights as herein provided, vacations will be given to employees whenever practicable on the dates asked for. The Employer, however, reserves the right to refuse to grant dates asked for if these dates conflict with plant operations. Vacation preference shall be granted on the basis of seniority when practicable. Vacation schedules will be posted not later than April 15th of each year.

ARTICLE X

Holiday and Sunday Pay

1. Any employee required to work on Sunday shall be paid at the rate of time and one-half unless Sunday is the employee's regularly scheduled work day.

2. Any employee actively on the pay roll but not required to work on

New Year's Day
Good Friday
Decoration Day
Independence Day
Labor Day

EXHIBIT A

Thanksgiving Day

Christmas Day

Presidential Election Day and General National Congressional Election Day, and Veterans' Day in the years when neither of these elections are held

shall receive pay at his regular straight time rate for the number of hours he would otherwise have been scheduled to work on such day. If any such holiday falls on Sunday, the following day shall be observed.

3. If any of the above holidays falls on an employee's regular day off, the employee will be given one day's pay at his regular straight time rate. In such cases, the unworked holiday hours shall not be included as hours worked for the purpose of computing overtime, and the day shall not be included in the count toward the seventh consecutive day worked.

4. To be eligible for unworked holiday pay, an employee must have been on active duty and have worked the hours required on his last regularly scheduled work day preceding the holiday or his first regularly scheduled work day following the holiday except in cases of excused absence or absences caused by personal illness or injury.

5. Any employee required to work on any of the above holidays shall receive his straight time rate of pay, and in addition, an amount equivalent to time and one-half his straight time rate of pay for the number of hours worked up to the number of his normal daily hours. If an employee is required to work hours in excess of the number of his normal daily hours on any of the above holidays, he shall be compensated at two times his straight time rate of pay for each additional hour worked.

6. Any employee who is requested to work on a holiday and who does not so work shall not be paid for the holiday.

7. Any employee who desires to lay off on Washington's Birthday or Veterans' Day in those years when it is not a paid holiday under Section 2 hereof, shall be permitted to do so.

ARTICLE XI

Sickness-Disability Benefits

Sickness and Accident Disability Benefits are set forth in the separate Agreement entitled "Appendix", the term of which is set forth therein.

ARTICLE XII

Funeral Allowance

1. In cases of death in the immediate family: i.e., wife, children, grandchildren, mother or father, brother or sister, mother-in-law or father-in-law, employees will be allowed the necessary time off not to exceed a total of three (3) scheduled working days at the rate of their regular permanent classified jobs, exclusive of overtime.

ARTICLE XIII

Jury Service

1. Employees who lose time from their regular schedule of work while serving on a jury shall be paid for such time lost at straight time rates without deduction for jury fees received by such employees.

ARTICLE XIV

Severance Pay

1. Any employee who is laid off or whose employment is severed through no fault of his own for a reason other than retirement

EXHIBIT A

under Employees Retirement Allowance Plan shall be granted severance pay as follows:

- (a) After actual service of one (1) year, one week's pay at his regularly scheduled hourly rate, exclusive of overtime.
- (b) After actual service of two (2) years' and up to five (5) years' service, two (2) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.
- (c) After actual service of five (5) years' and up to ten (10) years' service, three (3) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.
- (d) After actual service of ten (10) years' or more, four (4) weeks' pay at his regularly scheduled hourly rate, exclusive of overtime.

2. Any employee who is laid off or whose employment is severed and granted severance pay pursuant to this Article and if re-employed and is laid off or his employment is severed again through no fault of his own shall be denied a second severance pay allowance unless his actual service since re-employment has been one (1) year or more.

ARTICLE XV

Travel Time-Expense Allowance

1. In producing and pipe line operations one Regular Place of Employment shall from time to time be designated for employees to report. In cases where employees are instructed to report to another place for work, transportation shall be supplied by the Employer or compensated for and such time spent in travel to and from the job shall be considered as hours worked.

2. When an employee is required to remain away from his Regular Place of Employment overnight to perform work to which he has been assigned, the Employer shall reimburse him for all necessary transportation and in addition pay a flat rate living expense of seven dollars and twenty-five cents (\$7.25) each day while so assigned.

ARTICLE XVI

Moving Expense

1. In the event of permanent refinery shutdowns, when an employee exercises the continued employment privilege and thereby is compelled to move, the Employer will pay the cost of moving as defined and limited in Section 3 hereof.

2. In pipeline and producing operations, when an employee is demoted to a lower paid classification, promoted to a higher paid classification or is displaced by reason of seniority rules, and thereby is compelled to move, the Employer will pay the moving expenses as defined and limited in Section 3 hereof.

3. The cost of moving shall be confined to paying the costs of moving personal effects and household goods not to exceed a total of one hundred twenty dollars (\$120.00).

4. When an employee is transferred from one property, district or plant to another at the specific instance and request of the Employer, and thereby is compelled to move, the necessary ordinary and usual expenses incurred by such employee in moving shall be borne by the Employer and the employee shall suffer no loss in pay for time lost in connection with making such a move.

EXHIBIT A**ARTICLE XVII****Clothing-Tools**

1. The Employer agrees to replace or reimburse employees for clothing destroyed or rendered unfit for use, during the course of employment, by contact with acid, caustic or other chemicals or by fire, provided:

- (a) the loss was not the result of negligence on the part of the employee;
- (b) the employee was using available protective clothing or other such devices used in the performance of his normal duties;
- (c) the employee immediately reports such loss to his foreman; and
- (d) the clothing destroyed is surrendered to the foreman when the claim is presented.

If reimbursement is to be made, the Employer will consider purchase price, date of purchase and reasonable replacement value of the clothing destroyed at the time the loss occurred.

2. The Employer will, upon request, furnish gloves for welders and well servicing crews, and agrees to make available tools which the Employer deems necessary to carry on its operations.

ARTICLE XVIII**Collection of Dues**

1. The Employer agrees to deduct from wages payable on the first pay date occurring in each month the regular monthly Union dues (only) of all employees in the bargaining unit who are members of the Union after receipt from each such employee of a signed and properly dated written dues deduction authorization on the form hereinafter set out in full. These authorizations for deductions shall be irre-

3]

vocable in accordance with the terms of such order which shall be in the following form:

..... Company

You are hereby authorized and requested to hereafter deduct from wages earned by me during the last half of each month the dues as established by Local Union No. of Oil, Chemical and Atomic Workers International Union, AFL-CIO, being my regular monthly dues, and remit such sum to said local, or its assignee Local, on or before the fifteenth (15th) day of the following month. This authorization shall be irrevocable for a period of one (1) year from the date hereof, or until termination of the collective bargaining agreement between Sinclair Refining Company, Sinclair Oil & Gas Company, Sinclair Pipe Line Company and Sinclair Research Laboratories, Inc. and Oil, Chemical and Atomic Workers International Union, AFL-CIO, which became effective June 15, 1957, whichever first occurs; and shall be automatically renewed and be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective bargaining agreement between the parties above set forth, whichever shall be the shorter, unless within fifteen (15) days prior to the termination date of the applicable collective bargaining agreement or within fifteen (15) days prior to each anniversary date of this authorization, I submit written and properly dated notice of revocation of this authorization to the Employer and the Union, such notice to bear my signature. If, at the time I give notice of revocation, there is no such collective bargaining agreement in effect, or if such collective bargaining agreement then in

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effect does not provide for the deduction of my Union dues, such revocation shall become effective immediately upon receipt. This cancels all prior dues deduction authorizations signed by me.

.....
(signature of employee)

Dated

2. Union agrees that each of its Local Unions to which union dues deductions are to be forwarded as provided in Section 1 above shall send a letter, signed by a duly authorized officer of the Local Union and bearing its official seal, to Employer's local payroll office with copy to the Employer's Industrial Relations Department in New York, advising Employer as to the amount of the monthly union dues for its members, as established under the Union's constitution and by-laws, and advising Employer of the correct post office address and designating the full and correct title of the Local and the Officer thereof to which all future dues deduction payments are to be made.

3. It is agreed that present dues deduction authorizations on file with the Company shall continue to be honored by the Company as provided under the terms thereof until the Local Unions at their discretion replace the old forms with the authorization form set forth in Section 1 above.

4. All employees not now members of the Union shall upon proper application and acceptance be permitted to join the Union on terms and conditions no less favorable than those generally prevailing at the time of application.

5. The management agrees that when men are being employed it will notify the local union so that it may send for consideration men having qualifications for the job or jobs to be filled.

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ARTICLE XIX

Bulletin Boards

1. The Employer shall place bulletin boards on the properties in convenient locations. These boards may be used by the Workmen's Committees of the Union to post matters pertaining to its membership. No political notices of any kind may be posted on the bulletin boards.

ARTICLE XX

Classification Recommendations

1. It shall be the duty of the several Workmen's Committees hereinafter constituted to formulate a set of definitions covering recommended classifications of labor in various localities, such recommendations to be transmitted to the Oil, Chemical and Atomic Workers International Union, AFL-CIO, for submission by the Union to the Employer for early conference between the parties signatory hereto.

2. In the event that employer in refineries modifies existing units to the extent of changing the job content thereof or creates new jobs by building new units, the Employer shall give the Union advance notice of such modifications, or new construction, and shall afford the Union reasonable advance opportunity to discuss with the Employer before being placed in effect the classifications and rates which are to be established thereon. In the event of a dispute the unit may be placed in operation and the matter may be handled under Article XXVI hereof.

ARTICLE XXI

Physical Examinations

1. Employees shall not be required as a condition of employment to submit to a physical examination by a physician in the

pay of the Employer or its agents, but may furnish a certificate of current date from any reputable doctor of the employee's own choosing.

2. In the case of employees being absent from work due to illness or physical impairment they shall be readmitted to work upon the presentation of a certificate of physical fitness, signed by an accredited physician. This rule, however, shall not limit the right of the Employer to require physical examination by a physician in the Employer's service in exceptional cases or in cases of constantly-recurring absence from duty. However, there shall be no arbitrary or discriminatory denial of the right of an employee to return to work, and any denial which does occur shall be for good cause.

3. In case a dispute arises over the physical fitness of an employee to return to work, or to continue to work, a Board of three (3) physicians shall be selected, one (1) by the Employer, one (1) by the employee, and a third selected by the first two (2). This Board shall act, examine the employee, and render its final decision within fifteen (15) calendar days from the date the creation of the Board was requested in writing by the employee or the Union.

Employer and Union agree they will attempt to reach a mutual understanding, for presentation in writing to the third physician selected for the Board, with respect to the physical requirements demanded of the employee while in Employer's employ. If such a mutual understanding cannot be reached, Employer and Union will separately submit in writing, to the third physician selected for the Board, their respective views concerning the physical requirements demanded of the employee while in Employer's employ.

A written decision by any two (2) of the

three (3) physicians shall be final and binding. Should two (2) members of the Board of Physicians be unable to agree, then the decision of the third physician selected as above shall constitute the decision of the Board. The expense of the third physician shall be borne equally between the parties. If the case be settled in favor of the employee, he shall be made whole for any income lost between the date of the receipt of the employee's or Union's written request and the Board's final decision.

4. In case of dispute over the physical condition or fitness of any employee, injured on the job, the Company agrees to join with the employee in a written request to the examining physician to make available for inspection, to the employee or the employee's physician, such medical records and X-rays as relate to the injury giving rise to the dispute.

5. Applicants for employment shall be examined by a reputable physician chosen by the Employer.

6. In the event an employee, in the opinion of Employer, becomes physically incapable of performing his regular duties as a result of sickness or accident, Employer will attempt to assign such employee to work he is physically capable of performing within the plant or seniority district in which he is regularly employed if, in Employer's judgment, proper work is available for which the employee is otherwise qualified. An employee so assigned shall receive the established rate for the work performed. Such employee will be returned to his former regular duties when Employer has determined that he is capable of performing them.

ARTICLE XXII

Discharge Account of Accident

1. An employee shall not be discharged,

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if physically and mentally capable of continuing his duties, on account of any accident unless the accident was caused by the negligence, carelessness or malicious intent of the employee.

ARTICLE XXIII**Inspection of Equipment and
Safety Hazards**

1. Inspection of all equipment throughout any plant or place of employment shall be made by the superintendent or other person designated by the Employer from time to time, especially on pressure stills in the refineries, in gas plants, in and around drilling equipment and other places where explosions, fires or industrial accidents are likely to result in a loss of life or injury to employees. An inspection of any equipment may be secured upon the recommendation of the workman employed on such equipment. The local workmen's committee may make written suggestions to the superintendents or their representatives as to the elimination of hazards in order to prevent accidents.

2. No employee shall be required to perform services that seriously endanger his physical safety, and his refusal to do such work shall not warrant or justify discharge. In all such cases an immediate conference between the Employer and the Union shall be held to settle the issue in question.

3. In each refinery there shall be a management safety committee and not more than two (2) employees selected by the Workmen's Committee who shall be members of such safety committee to discuss and study safety.

ARTICLE XXIV**Contract Work**

1. On pipe lines, in production and in

gasoline plants, it is agreed that any classified work customarily performed by employees of the Employer, for the performance of which equipment and present or laid-off employees are available, shall not be contracted out. Whenever new production is being developed, roustabout and well-pulling work shall be performed by employees of the Employer.

2. In refineries, it is agreed that any classified work customarily performed by employees of the Employer shall not be contracted out as long as the Employer has the necessary equipment and so long as there are qualified employees available from among present or laid-off employees. This, however, shall not apply to major construction jobs or to the installation or construction of special or patented equipment not ordinarily installed by the Employer. The Employer in such cases will advise contractors when qualified employees are available for work on these special installations.

3. Employees granted leaves of absence to work for a contractor performing services for the Employer shall retain their seniority on the same basis as though they had continued to work for the Employer.

ARTICLE XXV

Conferences

1. Employees shall be paid one and one-half ($1\frac{1}{2}$) times their regular rate in the event that they are called in conference by an Employer representative at any time other than their regular working hours.

2. The employer agrees that employees will be compensated for time lost during their regular scheduled work day, at their regular straight time rate of pay, when discussing grievances with the local management as per Section 2, Sub-section (b) of Article XXVI. It is understood, however,

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that such compensation shall be limited to a reasonable number of employees, the number to be agreed upon between the Local Workmen's Committee and local management.

ARTICLE XXVI

Grievance and Arbitration Procedure

Definition

1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations.

Grievance Procedure

It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed:

2. For the purpose of adjusting employee grievances and disputes as defined above, it is agreed that any employee, individually or accompanied by his committeeman, if desired shall:

- (a) Seek direct adjustment of any grievance or dispute with the foreman under whom he is employed. Such meeting will be without loss of time to the employee and/or his committeeman during regular working hours for time spent in conference with the foreman. The foreman shall reply to said employee within three (3) working days (Saturday, Sunday and Holidays excluded) from the date on which the grievance was first presented to him;
- (b) If the question is not then settled, the employee may submit his grievance in writing, on forms supplied by Union, to a committee selected as hereinafter provided for the particular plant or region in which such employee is employed. Such committee shall investigate said complaint and if in its opinion the grievance has merit it shall have the right to meet with the

local company superintendent or his representative, who shall receive the committee for this purpose. Written decisions shall be made by the local superintendent or his representative within ten (10) days after meeting with the committee, provided that prior to the time of or at the meeting with the committee such complaint or grievance has been submitted in writing to the local superintendent or his representative.

- (c) In exceptional cases, Workmen's Committees shall have the right to institute grievances concerning any alleged violation of this Agreement by filing written complaint with the official locally in charge.
- (d) Any grievance filed with or by the local Workmen's Committee can only be withdrawn with the Workmen's Committee's consent.

3. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty (60) days from the date on which the complaint or grievance arose, or from the date on which the employee or employees concerned first learned of the cause of complaint.

4. The committee above mentioned shall be selected from among and by employees of the Employer who are members of the Union. No official, foreman, or employee having authority to hire or discharge men shall serve on the committee.

5. In case of discharge or lay-off, employees who may desire to file complaints must present such complaints within one (1) week after the effective date of discharge or lay-off to the committee mentioned in this Article. Before any such employee is to be discharged for cause, other than flagrant violation of rules, or is to be laid off, he shall be given a written notice, dated and signed by his foreman or other representative of the Employer, setting forth the reason for such discharge or lay-off. In the event an employee has been discharged for a

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flagrant violation of a company rule, he shall subsequently, upon request, be given a written notice, dated and signed by his foreman or other representative of the Employer setting forth the reason for such discharge. The Workmen's Committee will be furnished with a copy of the statement furnished to the employee, both where the discharge or lay-off is for cause or for flagrant violation of a Company rule. Any grievance to be filed under this section must be filed within forty (40) days from the effective date of the discharge or lay-off.

6. In the event the decision of the superintendent or his representative shall not be satisfactory to the committee, it is agreed that the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him, shall, not later than forty-five (45) days after such decision, have the right to confer with the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, for the purpose of discussing grievances or disputes and of obtaining decisions thereon. It is agreed that the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, shall render a decision to the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, within twenty (20) days after grievances or disputes have been so submitted to him in writing.

7. If such decision is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after

formation of such Board. Such local boards may be set up at each refinery to deal with cases arising therefrom; cases arising from Sinclair Oil & Gas Company shall be heard and determined at Tulsa, Oklahoma; Fort Worth, Texas; Midland, Texas; or Casper, Wyoming; cases arising from Sinclair Pipe Line Company shall be heard and determined at the cities previously named or at Kansas City, Missouri; Toledo, Ohio; Houston, Texas; Chicago, Illinois; Philadelphia, Pennsylvania; or Independence, Kansas. These local Arbitration Boards shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement, or supplements thereto, and local wage and classification disputes submitted on the initiative of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. In this connection, Employer agrees to give consideration to local classification rate inequity complaints existing by reason of a comparison with the average of competitive rates of pay for like jobs having comparable duties and responsibilities being paid by agreed-upon major competitive companies in the local area. Such requests for adjustments of classification rate inequities, if any, shall be made not more frequently than twice annually, to be effective on February 1st and August 1st. Such requests to be submitted at least thirty (30) days prior to such semi-annual dates.

8. The above mentioned local Arbitration Board shall be composed of one person designated by Employer and one designated by the President or District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. The board shall be requested by both parties to render a deci-

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sion within seven (7) days from date of submission. Should the two members of the board selected as above provided, be unable to agree within seven (7) days, or to mutually agree upon an impartial third arbitrator, an impartial third member shall be selected within seven (7) days thereafter by the employer or employee member of the Arbitration Board, or such two parties jointly, requesting the Federal Mediation and Conciliation Service to submit a panel of arbitrators from which the third member of the board will be selected in accordance with the procedure of such Federal Mediation and Conciliation Service.

9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. However, if the rules and conditions existing at the time a given case originated are subsequently changed, it is understood that the arbitration award rendered under former rules and conditions shall not act to prohibit consideration of a complaint originating under the changed rules and conditions.

10. Cases arising from the Gasoline Plants shall be considered as coming within the Producing Division in which they are located.

11. The fee and expense of the impartial arbitrator selected as above provided shall be divided equally between the parties to such arbitration. The Parties agree to attempt to hold the arbitrator's fees to a reasonable basis.

ARTICLE XXVII**General Disputes**

1. In the event any dispute or disagreement arises between the parties hereto regarding wages, hours or working condi-

tions, which is general in character, or which affects a large number of employees of any one of the Employers to which this agreement is applicable, such dispute shall be referred for settlement to the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, and the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him.

ARTICLE XXVIII

Discrimination

1. There shall be no discrimination of any kind against any member of the Union by any person in the employ of the Employer.

2. There shall be no discrimination against any member of the Union with respect to benefits derived or to be derived from membership in any group insurance plan, stock purchasing plan, benefit plan or pension plan established by the Employer for employees as a whole, either as now in existence or as established or changed in the future.

ARTICLE XXIX

Leave of Absence

1. If an employee desires to be off on personal business (not emergencies), he may do so subject to the approval of the management so long as he does not desire to be off over two (2) work weeks and provided that he gives local management twenty-four (24) hours notice of his desire to be absent and the length of time he desires to be off. Upon completion of such leave he will resume employment on the basis of uninterrupted service.

2. If any employee who has been elected or appointed an officer or representative of the Local or International Union, and

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who is covered by this agreement, desires an extended leave of absence (exceeding thirty (30) days and not more than one (1) calendar year) in order to engage in any work pertaining to the business of the Union, such leave will be granted, provided, however, that no more than four (4) employees from each refinery or seniority district of the pipeline and producing operations and two (2) employees from the Sinclair Research Laboratories, Inc. will be granted such extended leaves of absence per year and they must give the Employer five (5) days' written notice. The extended leave of absence will be renewed at the request of the Union for such employees who are re-elected or re-appointed as officers or representatives of said Local or International Union. Employees shall not be eligible for extended Union leaves of absence until they have completed six (6) months of continuous service.

3. In each refinery and Sinclair Research Laboratories, Inc. and in each seniority district in pipeline and producing operations, if any employee covered by this agreement desires a limited Union leave of absence (not to exceed thirty (30) calendar days), such leave will be granted by the Employer, provided, however, not more than five (5) employees from each refinery or seniority district shall be granted such leaves at any one time.

4. Any employee who has been granted Union leave of absence pursuant to this Article shall resume employment on the basis of uninterrupted service.

5. It is agreed that employees who have been or who may be assigned by the Employer to temporary duties outside of the continental limits of the United States, shall retain their seniority position status and

shall accumulate seniority during such approved periods of leave, subject, however, to the following:

- (a) It is intended that an employee granted a foreign duty leave of absence shall, during such period of leave, continue to accumulate seniority and employment rights in the operations covered by this agreement and that, upon satisfactory completion of the foreign duty assignment, the employee be re-employed and reinstated in the classification he vacated to accept said foreign service, provided such re-employment and reinstatement is consistent with the seniority applications in effect. It is not intended that such an employee should have any right in excess of that to which he would have been entitled had he remained employed in the operations covered by this agreement and he shall not have re-employment rights if an employee senior in service has involuntarily lost his re-employment rights pursuant to Section 6 of Article V.

ARTICLE XXX

Military Leave-Pay

Section 1. During the term of this Agreement

- (a) any employee who is in active service of the employer and has had more than forty-five (45) days of continuous service and volunteers, is drafted, or is called for active duty in the Armed Forces of the United States, the Coast Guard or Public Health Service, or is drafted in the Merchant Marine Service, or

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- (b) any employee in a lay-off status under the provisions of Article V, Section 6 of this Agreement who is recalled for re-employment by Employer and it is thereafter determined that he has previously volunteered, been drafted or been called for active duty in the Armed Forces of the United States, the Coast Guard or Public Health Service, or is drafted in the Merchant Marine Service,

shall, in accordance with existing law, be entitled to re-employment on the basis of his seniority accumulated at the time of his Honorable Discharge or Discharge Under Honorable Conditions from such service, provided he is physically and mentally able to do the work required and reports for work with a certificate of one of said discharges within 180 days after such discharge or final release from medical treatment. In the event his former job no longer exists he shall be placed in a position to which he is entitled in accordance with the seniority rules existing at his place of employment.

Section 2. Employees granted military leave of absence while in the service of the Employer shall receive the following lump sum payments upon acceptance for active service:

- (a) Over six months of service but less than five years of service: one month's pay;
- (b) Five years of service but less than ten years of service: one and one-half month's pay;
- (c) Ten years of service and over: two months' pay.

Calculation of the foregoing amounts shall be on the basis of average straight

time earnings for the two payroll periods immediately preceding the time that the military leave of absence began.

Section 3. In addition to the above payments, employees so accepted shall receive the amount of earned vacation pay accrued up to the date that the military leave of absence began.

Section 4. Employees who are granted a military leave of absence and who receive the benefits provided for herein may not again be eligible for benefits in those cases where they return to active employment and are later granted another leave of absence by reason of recall, re-induction or re-enlistment.

Section 5. Any employee who is a member of the Armed Forces Reserves and is required to participate in the annual training program shall be paid the difference between his regular straight time rate of pay and the amount received from the Government during the period of such annual training not to exceed three (3) weeks.

ARTICLE XXXI

Management's Rights

The Union recognizes that operation of the Employer's facilities and the direction of the working forces, including the right to hire, suspend or discharge for good and sufficient cause and pursuant to the seniority Article of this agreement, the right to relieve employees from duties because of lack of work, are among the sole prerogatives of the Employer; provided, however, that this section will not be used to discriminate against any member of the Union and such suspensions and discharges shall be subject to the grievance and arbitration clause of this working agreement; provided, further, this section shall not

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act to interfere with the Union's rights as elsewhere set forth in this agreement.

ARTICLE XXXII**Separability**

1. Should any part hereof or any provision herein contained be rendered or declared illegal by reason of any existing or subsequently enacted legislation or by a decree of a court of competent jurisdiction or an unfair labor practice by final decision of the Labor Relations Board, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions hereof. Nothing herein shall be construed to impair or abridge the right of either party hereto to appeal the court decrees or decisions of National Labor Relations Board.

Agreed to at New York, New York,
this 8th day of August 1957.

SINCLAIR REFINING COMPANY

By J. E. DYER,
President.

SINCLAIR OIL & GAS COMPANY

By H. B. SMITH,
Chairman of the Board.

SINCLAIR PIPE LINE COMPANY

By EARL W. UNRUH,
President.

**SINCLAIR RESEARCH LABORATORIES,
INC.**

By W. M. FLOWERS,
President.

**OIL, CHEMICAL AND ATOMIC
WORKERS INTERNATIONAL
UNION, AFL-CIO**

By O. A. KNIGHT,
President.

"APPENDIX"

Sickness and Accident Disability Benefits Plan

Whereas, Sinclair Refining Company, Sinclair Oil & Gas Company, Sinclair Pipe Line Company and Sinclair Research Laboratories, Inc. (herein called "Employer") and Oil, Chemical and Atomic Workers International Union, AFL-CIO, (herein called "Union") have concluded their negotiations and embodied their understanding in the Articles of Agreement effective June 15, 1957, and

Whereas, Employer and Union have agreed that Sickness and Accident Benefits will be covered in a separate agreement in the form of an Appendix to the new Articles of Agreement and shall be known as the Sickness and Accident Disability Benefits Plan (herein called the "Plan") established herein and set forth below.

Now, Therefore, it is agreed as follows:

1. All regular employees shall receive wages during periods of physical disability by reason of sickness or injury, subject to the following rules and regulations.

This plan shall not be considered as requiring the Employer to change any sick-pay allowances now in effect for monthly-rated employees.

2. **Employees Eligible.** All regular employees must first complete six (6) months of continuous service, i.e. without an interruption, other than excused absences, exceeding one hundred eighty (180) days (including returned war veterans with six (6) months or more of accumulated service), to become eligible to receive the benefits of this Plan.

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3. Schedule of Benefits. An eligible employee shall be entitled to maximum benefit payments as hereinafter provided:

LENGTH OF SERVICE	MAXIMUM BENEFITS	
	<i>Full Pay</i>	<i>Half Pay</i>
Less than 6 months	None	None
6 months but less than 1 year	1 week	None
1 year but less than 5 years	4 weeks	10 weeks
5 years but less than 10 years	8 weeks	28 weeks
10 years and over	12 weeks	40 weeks

Benefits payable shall be reduced by the amount of any Federal or State Statutory disability benefits or any other payments from the Employer, which the employee may receive in connection with a disability covered under this Plan.

Benefits payable shall also be reduced by any sums which the Employer is expressly authorized or legally required to withhold.

In exceptional cases where the period of illness exceeds the maximum, the Employer will consider the allowance of additional sick payment, giving consideration to the special conditions of each case.

4. Industrial Accidents. An employee necessarily absent from work due to an industrial accident shall receive the Full Pay benefits for the period provided in Section 3 hereof less Workmen's Compensation provided under State Laws. Upon exhaustion of such Full Pay benefits, an employee, whose absence due to industrial accident is of necessity continued, shall, in lieu of the Half-Pay provisions of Section 3, be compensated for the number of weeks during which Half-Pay is specified therein for the difference between Full Pay and Workmen's Compensation payable during that portion

of such period as he shall be entitled to Workmen's Compensation payments.

Upon acceptance of any lump sum settlement of a Workmen's Compensation claim, the provisions of this Section shall no longer apply.

The Employer's obligation under this Plan in an industrial accident case shall be fully discharged when the employee returns to work or when the appropriate maximum benefit has been exhausted, notwithstanding the provisions of Section 10 of this Plan.

5. General Provisions. The term "week" as used herein shall cover only the number of normally scheduled working days in a calendar week applicable to the individual employee.

6. No benefits will be paid employees for the first two (2) scheduled working days of any period of absence for personal sickness or injury. However, such waiting period will not apply in industrial accident cases or, in addition, in non-occupational disability cases where (a) the employee is hospitalized during any part of the period of his absence or (b) the employee, upon his return to work or during the course of his disability, produces a certificate by a reputable physician showing that the employee had been under the care of said physician from the first day for an illness or injury which rendered him unfit to work during the period of his absence.

7. The above benefits are not cumulative. Unused benefits during any calendar year may not be carried over into any subsequent calendar year.

8. Payments of wages during periods of physical disability shall be based on the employee's normal working schedule. In computing the number of days' pay an em-

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employee is entitled to receive under this Plan in any calendar year, pay allowance will be made for the actual number of normally scheduled working days within the period of such absence. Any pay for overtime work shall not be considered in determining rate of wages for the purpose of disability payments hereunder.

9. The pay during absence shall be at the rate the employee would have received had he continued to work.

10. If an absence due to illness or accident extends from one calendar year to another, the period of absence in each calendar year shall be charged only against the benefits to which the employee is entitled for that calendar year.

11. Employees shall not be entitled to pay allowances under this Plan in cases where illness or accident occurs while employee is on vacation, on leave of absences, or absent due to layoff. However, should an illness or injury originate during a regular vacation period and carry over until after the vacation period, the employee shall be entitled to pay allowance as a result of such illness or injury in the same manner as though the illness or accident originated on the date of his scheduled return to active duty.

12. An employee shall not be entitled to pay allowance under the Plan when sickness or injury is due to use of drugs, intemperance, unlawful acts, or injuries received in a brawl or a fight.

13. In cases of proven malingering, an employee shall be deprived for one (1) calendar year of all sick benefits under the Plan.

14. For the purpose of determining the amount of benefits hereunder, the Employer's records with respect to continuity of service and rate of wages shall be conclusive.

15. In order to qualify for benefits under this Plan, employees must, if required, present evidence satisfactory to the Employer, showing that an absence is due to illness or accident within the meaning of this Plan. The Employer reserves the right, as a condition of payments hereunder, to have an examination made and the treatment checked by a physician or other agent of its own selection.

16. Pay allowance granted under this Plan shall terminate upon the death of an employee or upon termination of his services for any reason.

17. The Sickness and Accident Disability benefits to which employees are entitled as of the effective date of the Plan shall be determined on the basis of crediting the employee with the benefit bank provided in the Plan

less, in the case of non-occupational disabilities, the amount of sickness-disability benefits paid to the employee prior to the effective date of the Plan but subsequent to January 1, 1957; and

less, in the case of occupational disabilities, the amount of disability bank benefits paid subsequent to the date of the accident for which benefits are being paid.

18. The Plan shall be subject to the Grievance and Arbitration Procedure of the Articles of Agreement.

19. The Plan shall become effective June 15, 1957, and will continue in effect without change to June 14, 1958, and thereafter, subject, however, to the right of either party, after serving sixty (60) days written notice upon the other party, on or after April 15, 1958, to indicate its desire to re-open the Plan for further collective bargaining for the purpose of modifying, amending, extending or terminating the Plan.

EXHIBIT A

**Agreed to at New York, New York,
this 8th day of August, 1957.**

SINCLAIR REFINING COMPANY

By J. E. DYER,
President.

SINCLAIR OIL & GAS COMPANY

By H. B. SMITH,
Chairman of the Board.

SINCLAIR PIPE LINE COMPANY

By EARL W. UNRUH,
President.

**SINCLAIR RESEARCH LABORATORIES,
INC.**

By W. M. FLOWERS,
President.

**OIL, CHEMICAL AND ATOMIC
WORKERS INTERNATIONAL
UNION, AFL-CIO**

By O. A. KNIGHT,
President.

SINCLAIR REFINING COMPANY

600 Fifth Avenue
New York 20, N.Y.

June 15, 1957

Mr. B. J. Schafer, Vice President
Oil, Chemical and Atomic Workers
International Union, AFL-CIO
P. O. Box 2812
Denver 1, Colorado

Dear Mr. Schafer:

During negotiation of the Articles of Agreement, which became effective June 15, 1957, the parties agreed that the specified amounts of shift differentials appearing in Article VIII of the Agreement shall be set forth in this Letter of Understanding.

As previously agreed, the amount of shift differentials, until changed as provided below, shall be:

Second (evening) shift—eight cents (8¢)
per hour

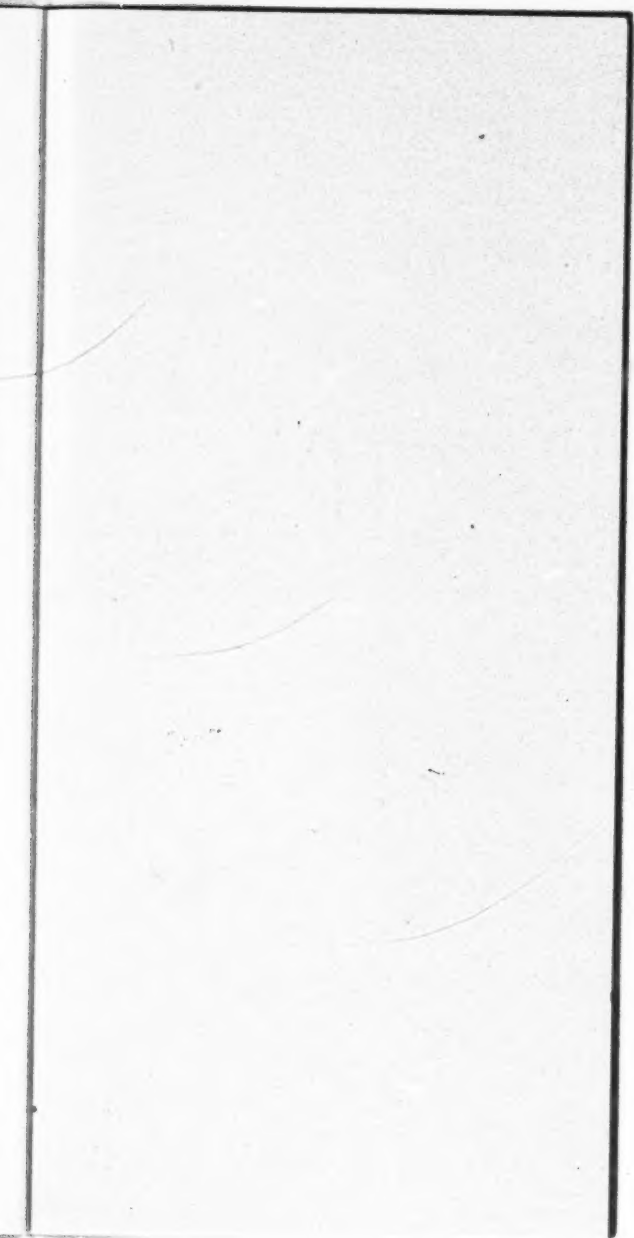
Third (night) shift—sixteen cents (16¢)
per hour

It is recognized by the parties to the Agreement that changes in the amounts of shift differentials have tended to occur, as do changes in wages, at times when there is a general movement in the Petroleum Industry. Thus, the procedure which applies to changes in wages under such conditions may appropriately be extended to include changes in shift differentials.

Therefore, when there is a general movement in the industry to increase or decrease the amount of shift differentials, negotiations for the purpose of revising the amount of such differentials may be initiated by either party. In the event such modification is desired either party may give written notice to the other party that a general dispute exists within the meaning and intent of Article XXVII of the Articles of Agreement. Within

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ЕХНІВІТ А



[fol. 89]

IN THE UNITED STATES DISTRICT COURT

ALTERNATIVE MOTIONS TO DISMISS THE ACTION, STRIKE THE COMPLAINT, OR MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN—Filed May 8, 1959

Now come the Defendants in the above-entitled cause, by Abraham W. Brussell and David M. Cohen, their attorneys, and they and each of them respectfully make the following motions to this Court, in the alternative:

1. The defendants move that the Court dismiss the action against the defendants and against each and every one of them; or in the alternative;

2. The defendants move that the Court strike the Complaint against each of the defendants and against each and every one of them;

As reasons in support of the said motions, the defendants show to the Court the following:

(a) There are no facts stated in the Complaint, showing any cause of action against any of the defendants, which would give this District Court jurisdiction, except a possible claim under Section 301 of the Labor Management Relations Act (hereinafter referred to as "LMRA"), against the defendant Union for breach of a collective bargaining agreement. The Complaint does not plead facts sufficient to charge said Unions with breach of a collective bargaining agreement.

(b) Under Section 301 of the LMRA, no cause of action of any kind is given or allowed against any individual defendant, but on the contrary, said provision is directed solely against a Union that is party to a collective bargaining agreement.

(c) Section 301 of the LMRA is the exclusive remedy [fol. 90] for violations of a collective bargaining agreement, and therefore no action can be maintained against individuals for violation of such an agreement under the

diversity of citizenship jurisdiction of the Federal District Courts.

(d) There are no facts stated in the Complaint, nor allegations made, showing that the plaintiff has complied with all of the conditions required, by it to be performed or satisfied for the purpose of permitting it to maintain an action for breach of contract.

(e) There are no facts stated, nor allegations made in the Complaint, sufficient to warrant the maintenance of any action for tort against defendants or any of them.

(f) Under Section 301 of the LMRA, the Government of the United States has demonstrated its intent to permit an action for breach of contract for alleged violation of a no-strike clause; such action is exclusive, and does not permit any state to maintain an action in tort for the same conduct which under federal legislation permits and warrants an action for breach of contract.

(g) Jurisdiction based upon diversity of citizenship does not lie here against the various defendants, because it is not sufficiently alleged that the action against each defendant for either contract or tort involves the requisite Ten-Thousand-Dollar-jurisdictional requirement of the diversity provisions of the United States Judicial Code.

(h) The Complaint on its face discloses that the plaintiff failed to comply with the condition precedent of processing its claim here against the Unions or against the individual defendants in accordance with the terms of the grievance procedure, set out in Article XXVI of the collective bargaining agreement attached to the Complaint.

(i) Complaint on its face discloses that the Court should stay the proceedings herein, because of the provisions of the United States Arbitration Act.

[fol. 91] (j) The Complaint on its face discloses that the plaintiff is attempting to sue the defendants for exercise of the rights guaranteed them under Section 7 of the LMRA.

(k) The Complaint on its face discloses that the District Court has no jurisdiction, because the matters com-

plained of constitute or involve unfair labor practices over which the National Labor Relations Board has exclusive jurisdiction under the terms and provisions of the LMRA.

(l) The Complaint on its face discloses that the District Court has no jurisdiction to issue a declaratory judgment or injunction or other form of mandatory relief against the Unions or individual defendants, under the provisions of the Norris-LaGuardia Act, the Clayton Act, the LMRA, and the Thirteenth Amendment to the Constitution of the United States.

(m) On the face of the Complaint, the plaintiff improperly seeks to circumvent and vitiate its obligations, under the aforesaid collective bargaining agreement, to settle disputes through the grievance and arbitration procedure, in violation of the LMRA, the Norris-LaGuardia Act, and the Clayton Act. The labor disputes alleged in Paragraph 9, Sub-Paragraphs (a)-(i), of Count III of the Complaint, have either been settled or are in the process of resolution through the grievance procedure set forth in Article XXVI of the collective bargaining agreement. This fact is substantiated by the Affidavit attached to this Motion, and marked Exhibit "A", and is made a part hereof.

(n) The Complaint improperly attempts to join causes of action against various parties for alleged breach of contract, alleged tort, alleged equity claims action, and alleged representative proceeding. There is no common cause, of law or fact, within the meaning of the rules [fol. 92] of the Federal Rules of Civil Procedure, which would warrant a joining of the several separate and distinct causes of action in one Complaint.

Abraham W. Brussell, David Cohen, Attorneys for
said Defendants.

Brussell & Gross, 318 West Randolph Street, Chicago 6, Illinois, RAndolph 6-2922; David Cohen, 2102 Broadway, East Chicago, Illinois, EXport 7-7100, Of Counsel.

IN THE UNITED STATES DISTRICT COURT

MOTION TO STAY ACTION—Filed May 8, 1959

Now come the Defendants in the above-entitled cause, by Abraham W. Brussell and David M. Cohen, their attorneys, and respectfully move that this action be stayed for the following reasons:

1. All of the issues in the above-entitled suit are referable to arbitration, under an agreement in writing for such arbitration between the parties to this lawsuit, pursuant to the United States Arbitration Act, and the Labor Management Relations Act.

2. Article XXVI of the collective bargaining agreement, attached to the Complaint, provides for the adjustment of disputes between the parties to the agreement.

3. The plaintiff and the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, and Local 7-210 of the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, are presently agreed to submit the issues raised in the Complaint, to the grievance procedure, and, if need be, to impartial arbitration, pursuant to Article XXVI of the aforesaid collective bargaining agreement. The issues raised by said grievance involve:

(a) The right of the plaintiff to take any form of disciplinary action against officials of Local 7-210 for allegedly participating in, fomenting, and assisting in the work stoppage alleged in Count I of plaintiff's Complaint;

(b) Whether the defendant Unions or any other defendant of the above-entitled lawsuit violated the aforesaid collective bargaining agreement in connection with the alleged work stoppage;

4. At no time during all the events alleged in the Complaint, did any of the defendants fail to follow the procedure for settlement and arbitration of grievances and labor disputes, pursuant to Article XXVI of the aforesaid collective bargaining agreement.

5. The affidavit, attached to this Motion, and marked Exhibit "A", is made a part hereof.

Wherefore, the defendants respectfully move this Court to stay all proceedings herein until the parties have processed their grievances and disputes through the grievance procedure, and if need be, through arbitration.

Respectfully submitted,

Abraham W. Brussell, David Cohen, Attorneys for
Defendants herein.

Brussell & Gross, David Cohen, Of Counsel.

[fol. 94]

EXHIBIT "A" TO MOTION TO STAY ACTION

State of Illinois,
County of Cook, ss.:

Affidavit

Tyler Swanson, being first duly sworn, on his oath deposes and states the following:

1. I am president of Local 7-210, Oil, Chemical, and Atomic Workers International Union, AFL-CIO (hereinafter referred to as "Local 7-210"), having held that position since January 1, 1957.

2. As the result of an alleged work stoppage which took place on February 13-14, 1959, the following grievances are now pending, pursuant to the grievance and arbitration procedure set forth in Article XXVI of the collective bargaining contract between Sinclair Refining Company (hereinafter referred to as the "Company") and Oil, Chemical, and Atomic Workers International Union, AFL-CIO:

(a) The illegality of disciplinary action, taken against the below-named individuals, as officials of Local 7-210, for allegedly fomenting, assisting, and participating in a strike or work stoppage, on February 13-14, 1959: A. F. Schilling, Sherman Moore, Samuel M. Atkinson, Zoltan Cziperle, John Reitz, Joseph Bundek, Charles Bainbridge, Mike Payer, Thomas F. Hicks, Dean Bainbridge, John J. Podraza, and Robert V. Dermody.

(b) The illegality of the Company's action, as justified by the Company because of the aforesaid alleged illegal work stoppage, in restricting the activity, movements, and processing of grievances by members of the Grievance Committee of Local 7-210, pursuant to Article XXVI and other provisions of the aforesaid collective bargaining agreement.

[fol. 95] The above-named individuals are the same-named individuals who are parties defendant to a lawsuit filed by Sinclair Refining Company *versus* Samuel M. Atkinson, et al., in the United States District Court for the Northern District of Indiana, Hammond Division.

All the above-named individual defendants in the aforesaid lawsuit are members of the aforementioned Grievance Committee.

3. The following alleged work stoppages and disputes, set forth in Count III, Paragraph 9, of the Complaint in the aforesaid lawsuit, have been disposed of by agreement between the Company and the Oil, Chemical, and Atomic Workers International Union, pursuant to the grievance procedure as set forth in Article XXVI of the aforesaid collective bargaining agreement: Sub-paragraphs (a), (b), (c), (d), (e), (g), and (h).

The alleged work stoppage and labor dispute, set forth in Count III, Paragraph 9(f) of the aforesaid Complaint, has also been settled by the aforesaid grievance procedure, except the question of compensation for one worker, which is the subject of a pending grievance.

The allegations, set forth in Count III, Paragraph 9(i) of the aforesaid Complaint, are the subject of the aforesaid grievances set forth in Paragraph 2 of this Affidavit, and of grievances filed by the three riggers for pay which was docked by the Company.

Tyler Swanson

Subscribed and sworn to before me this 6th day of May,
A. D. 1959.

Gilbert Feldman, Notary Public.

(Seal)

[fol. 113]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTIONS TO DISMISS ACTION, ETC.

—March 12, 1960

Defendants' alternative motions of May 8, 1959, to dismiss the action, strike the complaint, or make more definite, and the motion of May 8, 1959, to stay the action, are each of them hereby denied.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, March 12, 1960.

[fol. 116]

IN THE UNITED STATES DISTRICT COURT

MOTION TO VACATE ORDER OF MARCH 12, 1960—

Filed March 18, 1960

Now comes Samuel M. Atkinson, et al., the defendants herein, by their attorneys and respectfully move the Court herein to vacate order of March 12, 1960, entered by Judge Swygert therein and grant a rehearing in full on each and all of the said issues in said cause.

In support of said motion, defendants present the affidavit of Abraham W. Brussell.

Abraham W. Brussell, David M. Cohen by AWB,
William E. Rentfro by AWB, Attorneys for Defendants.

[fol. 117]

ATTACHMENT TO MOTION

State of Illinois,
County of Cook, ss.:

Affidavit.

Abraham W. Brussell, being duly sworn, makes his oath and deposes and says that he is one of the attorneys of record for all of the defendants in the said cause and that he is the attorney entrusted with the duty of conducting the proceedings in said cause; that as said attorney he caused to be prepared and filed certain motions on behalf of the defendants herein, mainly a motion to stay proceedings pending arbitration, motion to strike the complaint, motion to dismiss the complaint, etc., and caused briefs to be filed on behalf of the defendants herein in support of the said motion.

Affiant states that on Tuesday, March 15, 1960, he received herein copy of an order entered on March 12, 1960, signed by Judge Luther M. Swygert, the presiding Judge in this cause; that said order of March 12, 1960, overruled each and all of the motions of the defendants herein.

Affiant states that the questions of law presented by the said motions as reflected in the briefs filed by both parties herein and in the oral argument had before Judge Luther M. Swygert are questions of law where numerous authorities were cited by both of the parties herein. Affiant further states that some, but not all, of these questions of law had been previously presented in a matter had before Judge Swygert wherein your Affiant, as attorney for other defendants, took an appeal to the Court of Appeals for the Seventh Circuit in a cause entitled, *American Smelting and Refining Company v. United Steelworkers of America, AFL-CIO, et al.*, Cause No. 12651; that in said cause the Court of Appeals ruled that although an appeal would lie from an order overruling a motion to stay in the [fol. 118] nature of an appeal from an order denying a temporary injunction that reflect in the particular cause before it, the questions were moot because the matters involved in the motion to stay proceedings pending arbi-

tration had been decided by an arbitrator pending the hearing of the appeal and that such ruling made the litigation moot. In that case, the Court of Appeals therefore found it unnecessary to pass upon other questions of law which are either substantially similar and in some respects, identical to many of the questions of law presented by the motions filed by the defendants herein, overruled by Judge Swygert in his order of March 12, 1960.

Affiant states that Judge Luther M. Swygert is outside the boundaries of the United States and that he has been advised that Judge Swygert will not return to this country or take up the call or resume his duties as District Judge until approximately five (5) weeks have elapsed after March 12, 1960.

Affiant further states that Judge Swygert had left the country before affiant was advised of the ruling of Judge Swygert as reflected in his order of March 12, 1960.

Affiant states that as a matter of his professional obligation to his clients, he is of the opinion that for the protection of their rights in this cause and for the purpose of the ultimate termination of the litigation that he has advised them, in substance, to the effect that they should bring before the Court of Appeals for the Seventh Circuit for determination by that Court the questions of law presented by the several motions filed herein; that a difficult question of procedure as to the taking of an appeal that would not be fruitless in the sense that the Court of Appeals would rule that such an appeal was moot exists by virtue of the fact that Judge Swygert is out of the country. If, under the provisions of Title 28, U. S. C. A., Section 1292(b) a procedure is available that, in substance, [fol. 119] would permit an appeal from the order of Judge Swygert insofar as it overruled the motion to strike and motion to dismiss the action, such procedure would first require, as a condition preceding a recital in the order overruling such motions that would satisfy the requirements of Title 28, Section 1292(b), and further, that the Court of Appeals, in its discretion, would grant such an appeal provided application therefor were made to it within ten (10) days from the date of the order overruling the

motion and containing the findings required by Section 1292(b).

Affiant states that the record in the case at bar shows that the order involves controlling questions of law as to all three counts, or in the alternative, one or more of such counts as to which there is substantial ground for difference of opinion. Affiant further states that if this proceeding will go to trial there will be lengthy, expensive litigation with the ultimate termination extended long into the future.

Affiant respectfully suggests that for the purpose of avoiding a miscarriage of justice and for the purpose of permitting defendants to exercise the rights had under Section 1292(a) and (b), that the order of March 12, 1960, denying each and all of defendants' motions herein be vacated and set aside, and that a hearing be granted on all of the issues made by defendant's motions previously filed herein.

Further affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me, a notary public, this
..... day of March, 1960.

Notary Public.

[fol. 122]

IN THE UNITED STATES DISTRICT COURT

MOTION TO AMEND ORDER OF MARCH 12, 1960—
Filed March 18, 1960

Now come Samuel M. Atkinson, et al., the defendants herein by their attorneys and respectfully move the Court to amend the order entered herein on March 12, 1960; that the order as amended shall contain a provision that said order so amended involves a controlling question of law as to which there is substantial ground for difference of an opinion, and that further, an immediate appeal from the

said order, as amended, may materially advance the ultimate termination of the litigation.

In support of said motion, defendants present the affidavit of Abraham W. Brussell.

Abraham W. Brussell, David M. Cohen, by A. W. B.,
William E. Rentfro, by A. W. B., Attorneys for
Defendants.

Abraham W. Brussell, David M. Cohen, William E.
Rentfro.

[fol. 123]

ATTACHMENT TO MOTION

State of Illinois,
County of Cook, ss.:

Affidavit.

Abraham W. Brussell, being duly sworn, makes his oath and deposes and says that he is one of the attorneys of record of all of the defendants in the said cause and that he is the attorney entrusted with the duty of conducting the proceedings in said cause; that as said attorney he caused to be prepared and filed certain motions on behalf of the defendants herein, mainly a motion to stay proceedings pending arbitration, motion to strike the complaint, motion to dismiss the complaint and etc. and caused briefs to be filed on behalf of the defendants herein in support of the said motion.

Affiant states that on Tuesday, March 15, 1960, he received herein copy of an order entered on March 12, 1960, signed by Judge Luther M. Swygert, the presiding Judge in this cause; that said order of March 12, 1960 overruled each and all of the motions of the defendants herein.

Affiant states that the questions of law presented by the said motions as reflected in the briefs filed by both parties herein and in the oral argument had before Judge Luther M. Swygert are questions of law where numerous authorities were cited by both of the parties herein. Affiant further states that some, but not all, of these questions of law

had been previously presented in a matter had before Judge Swygert wherein your Affiant, as attorney for other defendants, took an appeal to the Court of Appeals for the Seventh Circuit in a cause entitled *American Smelting and Refining Company v. United Steelworkers of America, AFL-CIO, et al.*, Cause No. 12651; that in said cause the Court of Appeals ruled that although an appeal would lie from an order overruling a motion to stay in the nature [fol. 124] of an appeal from an order denying a temporary injunction that reflect in the particular cause before it, the questions were moot because the matters involved in the motion to stay ~~pr.~~ ~~things~~ pending arbitration had been decided by an arbitrator pending the hearing of the appeal and that such ruling made the litigation moot. In that case, the Court of Appeals therefor found it unnecessary to pass upon other questions of law which are either substantially similar and in some respects, identical to many of the questions of law presented by the motions filed by the defendants herein, overruled by Judge Swygert in his order of March 12, 1960.

Affiant states that Judge Luther M. Swygert is outside the boundaries of the United States and that he has been advised that Judge Swygert will not return to this country or take up the call or resume his duties as District Judge until approximately five (5) weeks have elapsed after March 12, 1960.

Affiant further states that Judge Swygert had left the country before affiant was advised of the ruling of Judge Swygert as reflected in his order of March 12, 1960.

Affiant states that as a matter of his professional obligation to his clients, he is of the opinion that for the protection of their rights in this cause and for the purpose of the ultimate termination of the litigation that he has advised them, in substance, to the effect that they should bring before the Court of Appeals for the Seventh Circuit for determination by that Court the questions of law presented by the several motions filed herein; that a difficult question of procedure as to the taking of an appeal that would not be fruitless in the sense that the Court of Appeals would rule that such an appeal was moot exists

by virtue of the fact that Judge Swygert is out of the country. If, under the provisions of Title 28, U. S. C. A., Section 1292(b) a procedure is available that, in substance, [fol. 125] would permit an appeal from the order of Judge Swygert insofar as it overruled the motion to strike and motion to dismiss the action, such procedure would first require, as a condition preceding a recital in the order overruling such motions that would satisfy the requirements of Title 28, Section 1292(b), and further, that the Court of Appeals, in its discretion, would grant such an appeal provided application therefor were made to it within ten (10) days from the date of the order overruling the motion and containing the findings required by Section 1292(b).

Affiant states that the record in the case at bar shows that the order involves controlling questions of law as to all three counts, or in the alternative, one or more of such counts as to which there is substantial ground for difference of opinion. Affiant further states that if this proceeding will go to trial there will be lengthy, expensive litigation with the ultimate termination extended long into the future.

Affiant respectfully suggests that in order to do substantial justice in this cause, and especially to the defendants herein, that the District Court should grant relief in amending the order of March 12, 1960, to the end that full compliance be had with the provisions of Title 28, Section 1292(b) United States Code Annotated, and to the end that defendants be permitted an opportunity to have an appeal under said 1292(b) which would not be subject to the possible defects of an appeal under 1292(a).

Further affiant sayeth not.

Abraham W. Brussell.

Subscribed and sworn to before me, a notary public, this
..... day of March, 1960.

.....
Notary Public.

[fol. 126]

IN THE UNITED STATES DISTRICT COURT

AFFIDAVIT—May 24, 1960

State of Indiana,
County of Lake, ss.:

Robert D. Clark, being first duly sworn, deposes and says that he is in charge of Industrial Relations at the East Chicago Refinery of Sinclair Refining Company, hereinafter referred to as the "Company";

That under the grievance routine in effect at that plant, grievances for purposes of clerical and identification purposes are given numbers;

That on March 4, 1959, grievances 11-X and 12-X were filed with the Company on behalf of employees Owen R. Boyle, Joseph S. Kislowski, and Anthony A. Martino, true and correct copies of which are annexed hereto;

Affiant further says that on March 4, 1959, grievances 13-X and 14-X were filed on behalf of employees Ancil P. Schilling, Sherman E. Moore, Samuel Atkinson, Zolton Cziperle, John Reitz, Joe Bundeck, Charles Bainbridge, Mike Payer and Thomas F. Hicks; that on March 25, 1959, grievance 24-X was filed on behalf of employees Dean Bainbridge, John J. Podraza and Robert Dermody and on April 22, 1959, grievances 31-X and 32-X were filed on behalf of employees A. Juhasz and George Badis. True and correct copies of all of said grievances are attached hereto.

Affiant says that in responding to grievances 11-X and 12-X, the Company asserted that the employees involved reported for work late on the several days in question and therefore were docked; that in responding to grievance [fol. 127] 13-X the Company responded in substance that employees Schilling and Moore performed no work for their job classification on February 13 and 16, nor were they engaged in proper processing of grievances for which payment of time lost during regular working hours may be made under the contract; that in responding to grievances

14-X, 24-X, 31-X and 32-X, the Company responded in substance that complainants therein were compensated for hours worked in performing their regular job duties, however, for those hours when they were not performing their regular jobs and were not otherwise in proper processing of grievances for which payment may be made under Article XXVI under the contract, they were not entitled to any compensation;

Affiant says that the parties have been unable to agree on the disposition or settlement of the asserted grievances and that in July and August 1959 the Union notified the Company of its desire to place the said matters in arbitration. Both the Union and Company named arbitrators. The arbitrators were unable to agree on a disposition of the matters. Thereupon the Union substituted Mr. Abraham Brussell, its attorney of record in within case, as its arbitrator and the Company substituted Mr. George Christensen, its attorney of record in within case, as its arbitrator; that a third or impartial arbitrator has not been selected as yet in any of the aforesaid matters; that amongst other matters it is the Company's position that by resorting to and participating in economic action (the February 13-14, 1959 walkout described in the complaint herein) the various grievants waived any believed right to arbitration and the Company, amongst other things, will contend on arbitration, if arbitration occurs, that the arbitrator is without jurisdiction.

Affiant states that he is aware of all grievances filed against the Company at East Chicago and that those mem-[fol. 128] tioned herein are the only ones in any way connected with the February 13, 14, 1959 walkout.

Further Affiant Sayeth Not.

Robert W. Clark.

Subscribed and sworn to before me this 24th day of May, 1960.

F. J. Galvin, Notary Public, Lake County, Indiana.
(Seal)

[fol. 129]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 11-X

Subject Loss of Time

Local No. 7-210

Date Complaint Occurred 2-4-59

Company Sinclair

Location East Chicago

Complainant's Name Owen Boyle

Address

Phone No.

Job

Dept. Rigger

Service in Job 10 In Dept. 11 In Co. 12

Foreman C. Barrix

Supt. C. Blaine

Nature of Complaint=

State who, what, when, where and why

On February 4, 1959 I was docked 15 minutes pay although I had punched in at 7:44 a.m. which is prior to starting time which is 7:45 a.m.

I am therefore requesting that I be reimbursed for these 15 minutes.

Signature /s/ Owen R. Boyle

[fol. 130]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date 3-4-59

Grievance No. 12-x

Subject Loss of Time

Local No. 7-210

Date Complaint Occurred 2-3-59

Company Sinclair

Location East Chicago

Complainant's Name Joseph Kislowksi & Anthony Mar-
tino

Address

Phone No.

Job

Dept. Rigging

Service in Job 9 In Dept. 10 In Co. 12

Foreman Miller

Supt. C. Blaine

Nature of Complaint=

State who, what, when, where and why

On February 3, 1959 we as the above complainants were docked 15 minutes pay although we had punched in prior to the starting time of 7:45 a.m.

We are therefore requesting that we be reimbursed for the 15 minutes lost.

Signatures /s/ Joseph S. Kislowksi

/s/ Anthony A. Martino

[fol. 131]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 13-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred Feb. 13 and Feb. 16, 1939

Company Sinclair Refining Co.

Location East Chicago

Complainant's Name Ancil Schilling and Sherman Moore

Address 1114 Cleveland—Hammond, Ind.
602 Hirsch St.—Calumet City, Ill.

Phone No.

Job Sinclair Employee

Dept.

Service in Job In Dept. In Co.

Foreman

Supt.

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959 and again on Feb. 16, 1959, the
above mentioned complainants were not paid wages by the
Sinclair Refining Company for work performed in connec-
tion with their everyday duties. We are asking that we be
reimbursed monies due for the above mentioned days.

Signatures /s/ Ancil F. Schelling
/s/ Sherman E. Moore

[fol. 132]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union AFL-CIO

Complaint or Grievance Report.

Date March 4, 1959

Grievance No. 14-X

Subject Loss of time

Local No. 7-210

Date Complaint Occurred February 13, 1959

Company Sinclair Refining Co.

Location East Chicago, Indiana

Complainant's Name Shop Committee

Address

Phone No.

Job

Dept.

Service in Job In Dept. In Co.

Foreman

Supt.

Nature of Complaint=

State who, what, when, where and why

We, the undersigned, request pay for time withheld by Company for work performed in due course of our duties as Shop Committeemen while processing grievances and performing our regular work duties on February 13, 1959, and February 16, 1959.

Signatures /s/ Samuel Atkinson
 /s/ Zolton Cziperle
 /s/ John Reitz
 /s/ Joe Bundek
 /s/ Charles Bainbridge
 /s/ Mike Fayer
 /s/ Thomas F. Hicks

[fol. 133]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report.

Date March 25, 1959

Grievance No. 24-X

Subject Loss of pay

Local No. 7-210

Date Complaint Occurred

Company Sinclair

Location East Chicago, Ind.

Complainant's Name Dean Bainbridge, John J. Podraza,
Robert Dermody

Address

Phone No.

Job

Dept.

Service in Job In Dept. In Co.

Foreman

Supt.

Nature of Complaint=

State who, what, when, where and why

We, the undersigned, were docked fourteen (14) hours
pay, eight (8) hours on February 13, 1959, and six (6)
hours February 16, 1959.

We request to be reimbursed for this loss of pay.

Signatures /s/ Dean Bainbridge
/s/ John J. Podraza
/s/ Robert Dermody

[fol. 134]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report

Date April 22, 1959

Grievance No. 31-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred Feb. 13 and Feb. 16, 1959

Company Sinclair Refining Company

Location East Chicago, Indiana

Complainant's Name A. Juhasz

Address

Phone No.

Job Sinclair Employee

Dept.

Service in Job In Dept. In Co.

Foreman

Supt.

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959 and again on February 16, 1959, the above mentioned Complainant was not paid wages by the Sinclair Refining Company for work performed in connection with his everyday duties.

I am asking that I be reimbursed monies due for the above mentioned days.

Signature /s/ A. Juhasz

[fol. 135]

ATTACHMENT TO AFFIDAVIT

Oil, Chemical and Atomic Workers
International Union—AFL-CIO-CLC

Complaint or Grievance Report

Date April 22, 1959

Grievance No. 32-X

Subject Loss of Pay

Local No. 7-210

Date Complaint Occurred February 13, 1959

Company Sinclair Refining Co.

Location East Chicago, Indiana

Complainant's Name George Badis

Address

Phone No.

Job Sinclair Employee

Dept.

Service in Job In Dept. In Co.

Foreman

Supt.

Nature of Complaint=

State who, what, when, where and why

On February 13, 1959, the above mentioned Complainant was not paid wages by the Sinclair Refining Company for work performed in connection with his everyday duties.

I am asking that I be reimbursed monies due for the above mentioned day.

Signature /s/ George Badis

[fol. 136]

IN THE UNITED STATES DISTRICT COURT

ORDER—June 23, 1960

Upon rehearing, it is hereby ordered, decreed, and adjudged that the order of March 12, 1960, be, and hereby is, vacated.

It is further ordered, decreed and adjudged that the Motion to Dismiss Count I be, and hereby is, denied.

It is further ordered, decreed and adjudged that the Motions to Dismiss Counts II and III be, and hereby are, granted.

It is further ordered, decreed and adjudged that the Motion to Stay be, and hereby is, denied.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, June 23, 1960.

[fol. 138]

IN THE UNITED STATES DISTRICT COURT

MEMORANDUM OF DECISION—June 23, 1960

The matter is before the court principally on a motion to vacate its order of March 12, 1960, and to grant a rehearing on several motions which were the subject of the March 12th order.

A rehearing has been afforded the defendants. After oral argument and submission of briefs on the motion for rehearing, I have come to the conclusion that the March 12th order should be vacated and a new order entered which modifies substantially the older order. A memorandum setting forth the reasons for the new order seems appropriate.

Dismissal of Count I.

As I understand defendants' contention, it is that if there are possibly protected or prohibited union activities under §§ 7 and 8 of the Labor Management Relations Act involved in the factual situation whereby the "no-strike" agreement was allegedly breached, the court cannot entertain jurisdiction under § 301 of the Act. They cite *San Diego Bldg. Trades Council v. Garmon*, 359 U. S. 236, and *Plumbers v. County of Door*, 359 U. S. 354.

The *Garmon* and *Door* cases dealt with pre-emption of state-court jurisdiction where there were present or arguably present protected or prohibited union activities which came within the jurisdiction of National Labor Relations Board under §§ 7, 8 and 10 of the Act. Neither case presented the problem of a conflict between the jurisdiction of the Board and the courts because of a possible overlap of activities protected or prohibited by §§ 7 and 8 and at the same time the basis for a violation of a labor contract enforceable under § 301.

[fol. 139] The alleged violation of a collective bargaining contract is the basis of Count I. There is nothing in the record at this point to indicate that the events claimed to constitute a violation of the contract also involved either protected or prohibited activity. But even the presence of such activities would not give preferential jurisdiction to the Board and oust that of the courts. The responsibility of enforcing labor contracts lies in the courts; otherwise there would have been no need for enacting § 301.

Dismissal of Count II.

The Court's attention has been called to two cases not considered at the time the motion to dismiss was originally ruled upon, *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, and *Wilson & Co. v. United Packinghouse Wkrs. of America*, 181 F. Supp. 809 (N. D. Iowa, 1960).

Judge Graven in the *Wilson* case, after an exhaustive discussion of the identical problem, concluded that the officers of the labor union are not individually liable for the inducement of a breach of a collective bargaining con-

tract where the union is being sued under § 301 of the Taft-Hartley Act for the breach. In his opinion, Judge Graven cited the *Lewis* case in support of his conclusion. In that case the Supreme Court in the majority opinion stated:

"Section 301(b) of the Taft-Hartley Act provides that 'any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.' At the least this evidences a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it"

[fol. 140] It is clear from the language in the *Lewis* case that a labor union when sued under § 301 must be treated as if it were a corporation. It is also made clear that union members or officers cannot be held individually liable for acts of the union, as, similarly, stockholders and officers of a corporation are not liable for corporate acts.

It is generally the law that officers and employees of a corporation cannot be held liable for inducing a breach of its contract. *Wilson & Co. v. United Packinghouse Wkrs. of America*, *supra*; 30 *Am. Jur.*, *Interference*, § 37; *Hicks v. Haight*, 171 Misc. 151, 11 N.Y.S. 2d 912 (1939); 26 *A.L.R.* 2d 1270. By analogy, and having in mind the language in the *Lewis* case, a union member or officer cannot be held liable for inducing the breach of a union contract.

The fact that Count II is based on diversity jurisdiction is not determinative of the motion. Section 301 is more than a procedural statute; it is also substantive. The section is the statutory source of federal law governing remedies for violations of collective bargaining contracts. *Textile Wkrs. etc. v. Lincoln Mills of Alabama*, 353 U. S. 448.

Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under § 301 as that section has been construed by the

Supreme Court, the conclusion is inevitable that suits of the nature alleged in Count II are no longer cognizable in state or federal courts.

Dismissal of Count III.

Plaintiff urges that since *Lincoln Mills* allowed specific enforcement of the agreement to arbitrate the case now compels specific enforcement of the no-strike agreement received in exchange for the promise to arbitrate. It contends that the Norris-LaGuardia Act should not preclude [fol. 141] injunctive relief in the case at bar because the conditions which prompted passage of that Act no longer obtain.

That the suit at bar involves a labor dispute within the meaning of § 13(c) of the Norris-LaGuardia Act is beyond dispute. That it also involves an alleged breach of a no-strike clause of a collective bargaining agreement does not alter the fact a labor dispute exists under the definition of § 13(c) of the Act. *A. H. Bull Steamship Co. v. National-Marine Eng. B. Assn.*, 250 F. 2d 332.

Since the original ruling on the motion to dismiss Count III, the Supreme Court decided *The Order of Railroad Telegraphers, et al. v. Chicago & N. Western R. Co.*, on April 18, 1960. In that case the Supreme Court left no doubt that § 4 of the Norris-LaGuardia Act withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal "to perform work or remain in any relation of employment" in cases involving any labor dispute.

Upon reconsideration and in light of the opinion in *Railroad Telegraphers*, I have come to the conclusion that *Lincoln Mills* does not remove the sweep of the Norris-LaGuardia Act so as to permit the specific enforcement of a no-strike clause in a labor contract.

Motion to Stay.

Defendants seek a stay of the action on the ground that certain grievances filed as the result of the strike or work stoppage alleged in the complaint are subject to arbitra-

tion in accordance with the procedure outlined in the contract. In my opinion the resolution of these grievances by arbitration would not decide whether there was a strike or work stoppage and whether there occurred thereby a breach of the contract by the union which promised not to permit work stoppages or strikes over matters which are subject to arbitration. *Lincoln Mills* permits a labor union [fol. 142] to sue under § 301 for specific performance of a promise by the employer to arbitrate grievances defined in the collective bargaining agreement. For similar reasons, the employer has the right under § 301 to sue the union for a violation of the no-strike clause.

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, decided by the Supreme Court on June 20, 1960, the majority opinion said in part:

"The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate."

Paraphrasing the above language, Congress by § 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances.

The arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from the issue whether the union violated its contract. For that reason the motion to stay must be denied.

Luther M. Swygert, United States District Judge.

Hammond, Indiana, June 23, 1960.

[fol. 145]

IN THE UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT

Now comes plaintiff, Sinclair Refining Company, by its attorneys, Winston, Strawn, Smith & Patterson and Galvin, Galvin & Leeney, and moves this Honorable Court to find that there is no just reason for delaying the entry of a final judgment upon Counts II and III of the Complaint, and to enter an order directing the entry of a final judgment dismissing Counts II and III of the Complaint and dismissing the individual defendants from this action.

And as cause for said motion, plaintiff respectfully shows:

1. Under the terms of Rule 54(b) of the Federal Rules of Civil Procedure an order dismissing less than all of the claims in an action does not terminate the action as to any of the claims unless the Court specifically directs the entry of a final judgment upon such claims and makes an express finding that there is no just reason for delay. In the absence of such finding and direction, the aggrieved party has no right to appeal the dismissal of claims until all of the claims have been disposed of by the court. (This rule, however, does not restrict statutory appeals.)
2. This Court's order of June 23, 1960 has the practical effect of terminating the action as to the individual defendants if plaintiff desires to appeal the dismissal of Counts II and III. If plaintiff is permitted to take such an appeal only after all of the claims in the action have been resolved, it could well result in plaintiff having to try this lawsuit [fol. 146] twice: first, before appeal against the union defendants, and second, after the appeal if plaintiff is successful, against the individual defendants.

It is therefore apparent that "there is no just reason for delay" (Rule 54(b)), and that it is to the interest of all parties that plaintiff be permitted promptly to perfect an appeal as to the dismissal of Counts II and III.

Respectfully submitted,

Winston, Strawn, Smith & Patterson; Galvin, Galvin & Leeney.

Received a copy of the above and foregoing Motion this 1st day of July, 1960.

Abraham W. Brussell, for all of the Defendants.

IN THE UNITED STATES DISTRICT COURT

NOTICE OF MOTION TO AMEND ORDER OF JUNE 23, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Please Take Notice that on Tuesday, July 5, 1960 at the hour of 9:30 A.M. or soon thereafter as counsel may be heard, we shall appear before the Honorable Luther M. Swygert, Judge of the District Court for the Northern [fol. 147] District of Indiana, or any other judge sitting in his place and stead, and at that time we shall present the motion of the defendants herein, copy of which is hereby attached and served upon you, asking the Court to enter a motion to amend the order of June 23, 1960 entered by Judge Swygert therein by changing the date for the production of books and records from July 6, 1960 at 10:00 A.M. to the date of July 28, 1960 at 10:00 A.M.

In support of said motion, defendants present the affidavit of Abraham W. Brussell, copy of which is attached hereto and served upon you.

Abraham W. Brussell, David Cohen, William E. Rentfro, Attorneys for Defendants.

Abraham W. Brussell, 318 West Randolph Street, Chicago 6, Illinois, RAndolph 6-2922, David M. Cohen, 2102 Broadway, East Chicago, Indiana, William E. Rentfro, P. O. Box 2812, Denver, Colorado.

Received this Notice this 1st day of July, 1960.

Galvin, Galyin & Leeney; Winston, Strawn, Smith & Patterson.

[fol. 148]

IN THE UNITED STATES DISTRICT COURT

JUDGMENT—July 5, 1960

This cause came on for hearing on defendants' motions to dismiss Counts I, II and III of the Complaint, and the Court, after hearing all parties, having entered an order on June 23, 1960 dismissing Counts II and III, and the Court having determined that there is no just reason for delay and having directed the entry of a final judgment on said Counts II and III,

It Is Hereby Ordered, Adjudged and Decreed, that the individual defendants be and hereby are dismissed from this action and that Counts II and III be and hereby are finally dismissed.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, July 5, 1960.

IN THE UNITED STATES DISTRICT COURT

ORDER GRANTING PLAINTIFF LEAVE TO FILE
INTERLOCUTORY APPEAL—July 5, 1960

This cause coming on to be heard on the motion of plaintiff for permission to file an interlocutory appeal from the Order of this Court entered June 23, 1960, dismissing Counts II and III of the Complaint; and

The Court being of the opinion that the Orders dismissing Counts II and III involve controlling questions of law as to which there is substantial ground for differences of opinion and that an immediate appeal from these Orders will materially advance the ultimate termination of the [fol. 149] litigation, concludes that an appeal should be permitted to be taken from the Orders at this time, pursuant to Section 1292(b), 28 U. S. C.;

It Is Therefore, Ordered that the plaintiff be granted leave to file an interlocutory appeal.

Enter:

Luther M. Swygert, United States District Judge.

Hammond, Indiana, July 5, 1960.

IN THE UNITED STATES DISTRICT COURT

MOTION TO VACATE ORDERS OF JULY 5, 1960 FOR THE PURPOSE OF CONSIDERATION OF MOTIONS FOR LEAVE TO FILE AN AMENDED COUNT II AND FOR RECONSIDERATION OF THE COURT'S RULING DISMISSING COUNT III—Filed July 21, 1960

Now comes the plaintiff, by its attorneys, and moves that the orders entered herein July 5, 1960 with respect to appeals be vacated for the purpose of allowing plaintiff to file a motion for leave to file an Amended Count II and a motion to reconsider the Court's ruling dismissing Count III.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

[fol. 150]

IN THE UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO FILE AMENDED COUNT II AND MOTION
FOR RECONSIDERATION OF THE COURT'S RULING DISMISS-
ING COUNT III—Filed July 21, 1960

Now comes the plaintiff, by its attorneys, and moves that it be given leave to file an Amended Count II to its Complaint herein, copy whereof is tendered herewith.

Plaintiff further moves that the Court reconsider its ruling of June 23, 1960 dismissing Count III of the Complaint. As cause for such reconsideration plaintiff shows that on June 20, 1960 the Supreme Court decided the cases of *United Steelworkers v. American Manufacturing Co.*, *United Steelworkers v. Warrior & Gulf Navigation Co.*, *United Steelworkers v. Enterprise Wheel & Car Corp.*, and *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.*, all concerned with enforcement of the national labor policy that grievances and minor disputes should be settled by arbitration.

Plaintiff's counsel had no opportunity to argue the sweeping effect of the June 20 decisions and their relationship to the case at bar. Those decisions go so far, and cut such a wide path, that their effect may not be fully appreciated on first reading.

Plaintiff respectfully shows that in 1957, in *Brotherhood of Railway Trainmen v. Chicago River & Indiana Railroad Company*, 353 U. S. 30, it was held that the Norris-LaGuardia Act did not prohibit injunctions by Federal courts prohibiting strikes over what are termed "*minor disputes*" under the Railway Labor Act that fell within the jurisdiction of the Railroad Adjustment Board. The Court said in that case, *inter alia*:

"We hold that the Norris-LaGuardia Act cannot be [fol. 151] read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable.

"In adopting the Railway Labor Act, Congress endeavored to bring about stable relationships between labor and management in this most important national industry. It found from the experience between 1926 and 1934 that the failure of voluntary machinery to resolve a large number of minor disputes called for a strengthening of the Act to provide an effective agency, in which both sides participated, for the final adjustment of such controversies * * * .

"The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized economic power, which is vital to collective bargaining. * * * Such controversies, therefore, are not the same as those in which the injunction strips labor of its primary weapon *without substituting any reasonable alternative.*" (Emphasis supplied.)

On April 18, 1960, in *Railroad Telegraphers*, the Supreme Court held that the issue was a proposed contract change and, therefore, was a bargainable issue or so-called "*major dispute*" within the meaning of the Railway Labor Act and, therefore, because of Norris-LaGuardia, was not subject to injunction.

On June 20, in *Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.*, the Court again upheld the power of a Federal court, despite the Norris-LaGuardia Act, to issue injunctions in "*minor disputes*," i.e., those within the jurisdiction of the Adjustment Board. "*Minor disputes*" within the parlance of the Railway Labor Act are the equivalent of "*grievances*" that are submissible to arbitration under the parlance of the Labor-Management Relations Act. Thus the Supreme Court's June 20 holding demonstrates, we submit conclusively, that how- [fol. 152] ever sweeping the language of *Railroad Telegraphers* may have been thought to be, the Court did not intend thereby to modify in the slightest the teaching of *Chicago River & Indiana* that strikes over "*minor disputes*" may be enjoined. *Railroad Telegraphers* therefore has no relevance to the case at bar.

The other June 20, 1960 decisions of the Supreme Court show a broad policy to require submission of "*grievances*,"

i.e., "minor disputes," under the Labor-Management Relations Act to arbitration. In the *Warrior & Gulf Navigation* case the Court held:

"We held in *Textile Workers v. Lincoln Mills*, 353 U. S. 448, that a grievance arbitration provision in a collective agreement could be enforced by reason of § 301(a) of the Labor-Management Relations Act and that *the policy to be applied in enforcing this type of arbitration was that reflected in our national labor laws. Id.*, at 456-457. *The present federal policy is to promote industrial stabilization through the collective bargaining agreement. Id.*, at 453-454. *A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.*"

"* * * arbitration is the substitute for industrial strife. Since arbitration of labor disputes has quite different functions from arbitration under an ordinary commercial agreement, the hostility evinced by courts toward arbitration of commercial agreements has no place here. For arbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself."

"* * * But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes [fol.153] through the grievance machinery is actually a vehicle by which meaning and content is given to the collective bargaining agreement.

"Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining

process. *It rather than a strike, is the terminal point of a disagreement.*"

"* * * to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or agreed to give the arbitrator power to make the award he made. * * *"

"The judiciary sits in these cases to bring into operation an arbitral process which substitutes a regime of peaceful settlement for the older regime of industrial conflict. Whether contracting-out in the present case violated the agreement is the question. It is a question for the arbiter, not for the courts." (Emphasis added.)

The *American Manufacturing Co.* decision of June 20 places the desirability of protecting and enforcing arbitration under the Labor-Management Relations Act on as important a basis as it is in *Railway Labor*, for the Court says in that decision:

"Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. § 173(d) states, 'Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective [fol. 154] bargaining agreement. * * *' *That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.*"

The philosophy of the June 20, 1960 decisions clearly shows that the Supreme Court is determined to enforce the policy it laid down in *Lincoln Mills*. That policy necessarily means under the *Labor Management Relations Act*, as much as under the *Railway Labor Act*, that where a "minor dispute" or "grievance" is subject to arbitration, whether by a privately selected arbitrator under Labor-

Management or an Adjustment Board under Railway Labor, that a strike over it may be enjoined despite Norris-LaGuardia.

The entire policy that the Supreme Court so forcefully expressed in *Lincoln Mills* and *Chicago River & Indiana* and in its June 20 decisions would be frustrated if the courts were to say that unions will be permitted in all the major industries of the country to resort to strike rather than to arbitrate over grievances. That is the issue raised by Count III of the case at bar.

In the *Warrior & Gulf Navigation* case Justice Douglas used the following language:

"The Congress, however, has by Sec. 301 of the Labor-Management Relations Act, assigned the courts the duty of determining *whether the reluctant party has breached his promise to arbitrate.*" (Emphasis supplied.)

Plainly the requirement to arbitrate is to be enforced against *both parties*—not merely the employer. As shown in plaintiff's "Memorandum in Support of Count III," this can be done effectively only through the injunctive process.

[fol. 155] A decision to strike or to dismiss Count III is at variance with the June 20 decisions.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO VACATE ORDERS OF JULY 5, 1960,
AND DENYING MOTION TO FILE AMENDED COUNT II, ETC.
—July 21, 1960

Plaintiff files motion to vacate orders of July 5, 1960, for the purpose of consideration of motions for leave to file an amended count II and for reconsideration of the court's ruling dismissing count III.

Plaintiff files motion for leave to file amended count II and Motion for Reconsideration of the court's ruling dismissing Count III.

Parties present in court by counsel, for hearing on motions filed by plaintiff this date. (H. I.) Arguments heard. Order per form (SE). Swygert: J. Motion to vacate orders granted; motion to file amended complaint and for reconsideration of court's ruling dismissing count III, denied.

[fol. 156]

IN THE UNITED STATES DISTRICT COURT

AMENDED COUNT II TO COMPLAINT

Now comes the plaintiff, leave of Court being first duly had and obtained, and files this, its Amended Count II to the Complaint herein:

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Maine. It maintains its principal office in the State of New York. For purposes of federal diversity jurisdiction, upon which this Court depends, it is a citizen of Maine and of New York and of no other states. Plaintiff is also an employer in an industry affecting commerce within the meaning of the National Labor Relations Act, as amended.

2. The defendants Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach,

Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, and A. F. Schilling (hereinafter sometimes referred to as "individual defendants") are, and at all times material hereto were, employees of the plaintiff at a refinery which it operates at East Chicago, Indiana. Each said individual defendant is a citizen of Illinois or Indiana and none are citizens of Maine or New York. Each of the defendants in this paragraph named is, and at all times material hereto was, a committeeman of the Local Union and an agent of the International charged with representing and protecting their interests and those of their members in various sections or departments of plaintiff's refinery at East Chicago, Indiana.

[fol. 157] 3. The amount in controversy herein exceeds the sum or value of \$10,000 exclusive of interest and costs.

4. Plaintiff adopts as and for the allegations of this paragraph 4 of (sic) the allegations of paragraph 2 of Count I.

5. Plaintiff adopts as and for the allegations of this paragraph 5 the allegations of paragraph 3 of Count I.

6. Plaintiff adopts as and for the allegations of this paragraph 6 the allegations of paragraph 4 of Count I and adds to it the following: The said Exhibit A constitutes a contract not only between The International and Local Union and plaintiff but was (during its term) a part of the individual contracts of employment between plaintiff and the sundry approximate 1700 individual employees within the said bargaining unit.

7. Plaintiff adopts as and for the allegations of this paragraph 7 the allegations of paragraph 5 of Count I.

8. Plaintiff adopts as and for the allegations of this paragraph 8 the allegations of paragraph 6 of Count I.

9. Plaintiff shows that February 13 and 14, 1959 were regular working days for its refinery at East Chicago, Indiana, but on said days the individual defendants and each of them, contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and con-

spiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract by the said labor organizations and of approximately 999 individual contracts of employment of which the said contract formed a part, and to interfere with performance thereof by the said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated in a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit represented by the Local Union at said East Chicago refinery [fol. 158] over asserted pay claims on behalf of three members of the said bargaining unit aggregating \$2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract.

10. Plaintiff shows that the work stoppage of February 13-14, 1959, greatly disrupted the normal operations of its refinery and that its damages by way of out-of-pocket expenses directly caused by the aforesaid illegal stoppage, induced, fomented and assisted by the individual defendants as hereinabove alleged, were, to-wit, \$12,500.

Wherefore, plaintiff brings this suit and prays judgment jointly and severally against the individual defendants for \$12,500 and costs.

Timothy P. Galvin, George B. Christensen, Fred H. Daugherty, Attorneys for Plaintiff.

Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana; Winston, Strawn, Smith & Patterson, 38 South Dearborn Street, Chicago 3, Illinois, Of Counsel.

[fol. 159]

IN THE UNITED STATES DISTRICT COURT

ORDER—July 21, 1960

The plaintiff's motion to vacate orders of July 5, 1960 for the purpose of consideration of motions for leave to file an amended Count II and for reconsideration of the Court's ruling dismissing Count III, is hereby granted.

The plaintiff's motion for leave to file amended Count II, and for reconsideration of the court's ruling dismissing count III, is hereby denied.

The order of June 23, 1960 is again amended in that the date originally specified therein as July 6, 1960, is now specified as August 23, 1960.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, July 21, 1960.

[fol. 160]

IN THE UNITED STATES DISTRICT COURT

ORDER—July 28, 1960

The plaintiff's motion to vacate orders of July 5, 1960 for the purpose of consideration of motions for leave to file an amended Count II and for reconsideration of the Court's ruling dismissing Count III, is hereby granted.

The plaintiff's motion for leave to file amended Count II, and for reconsideration of the court's ruling dismissing Count III, is hereby denied.

The orders of June 23, 1960 are hereby vacated and reinstated effective July 21, 1960 except that the date originally specified therein as July 6, 1960 for the production of documents is now specified as August 23, 1960. The orders of July 5, 1960 are reinstated effective July 21, 1960 and made applicable to this order.

Enter:

Luther M. Swygert, Judge.

Hammond, Indiana, July 28, 1960.

[fol. 162]

IN THE UNITED STATES DISTRICT COURT

MOTION RE INTERLOCUTORY APPEAL—Filed July 28, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago, Illinois, Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Now comes Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, each on their own behalf and for each other, by their attorneys, and move the Court as follows:

1. The order of the Court of June 23, 1960, which was vacated and reinstated effective July 21, 1960, overruling defendants Motion to Dismiss or Strike Count I of the Complaint in the above-entitled action involves controlling questions of law as to which there is substantial ground for differences of opinion and that an immediate appeal will advance the ultimate termination of litigation and that therefore leave be granted the defendants, pursuant to 28 USC S. 1292(b), to file an interlocutory appeal from the aforesaid order.

2. The Court determine and rule that there is no just reason for delay and therefore direct the entry of a final order denying defendants aforesaid Motion to Dismiss or [fol. 163] Strike Count I of the Complaint, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Samuel M. Atkinson, et al., By: Abraham W. Brunsell, David Cohen, William E. Rentfro.

Dated at Chicago, Illinois, this 28th day of July, 1960.

IN THE UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT, ETC.—Filed July 28, 1960

To: George B. Christensen, Winston, Strawn, Smith and Patterson, 38 South Dearborn Street, Chicago, Illinois, Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

Now Come Samuel Atkinson, et al., each on his own behalf and for the other defendants, by their attorneys, and moves the Court as follows:

The Court, having entered an order on June 23, 1960 which was vacated and reinstated effective July 21, 1960, denying defendants' Motion to Stay this action, the Court now determine and rule that there is no just reason for delay and therefore direct the entry of a final judgment or order denying the aforesaid Motion to Stay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Samuel M. Atkinson, et al., By Abraham W. Brunsell, David Cohen, William E. Rentfro.

Dated at Chicago, Illinois this 28th day of July, 1960.

[fol. 164]

IN THE UNITED STATES DISTRICT COURT

ORDER RE JUDGMENT—July 28, 1960

Parties appear by counsel. Motion for entry of final judgment pursuant to Rule 54(b) relating to defendants' motion to stay pending arbitration, heard. Motion granted.

Court now determines and rules that there is no just reason for delay and therefore directs the entry of a final order denying the motion to stay. Judgment entered accordingly.

Defendants' motion for an order pursuant to 28 U. S. C. § 1292(b) for permission to file an interlocutory appeal from the court's denial of defendants' motion to dismiss

and to strike Count I of the complaint, heard. Motion denied.

It is stipulated by counsel that pending the appeal of the orders granting defendants' motion to dismiss Counts II and III, no assignment for trial will be made of Count I. Stipulation approved.

Order to amend order of July 21, 1960 entered by agreement.

[fol. 165]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA,
HAMMOND DIVISION.

No. 2566

[Title omitted]

NOTICE OF APPEAL—Filed August 6, 1960

Notice is hereby given that Plaintiff, Sinclair Refining Company, hereby appeals in the above entitled cause to the United States Court of Appeals for the 7th Circuit from:

1. That portion of the order of the District Court dated July 5, 1960 (later reinstated and made effective July 21, 1960 by order dated July 28, 1960) which finally dismissed Counts II and III of the Complaint and dismissed all individual defendants from the action.

2. That portion of the orders of the District Court dated July 21 and 28, 1960 denying Plaintiff leave to file an amended Count II to the Complaint.

George B. Christensen, Francis J. Galvin, Fred H. Daugherty, Richard W. Austin, Attorneys for Plaintiff, By Fred H. Daugherty, One of the Attorneys for Plaintiff.

August 4, 1960

Winston, Strawn, Smith & Patterson, 38 S. Dearborn Street, Chicago, Illinois; Galvin, Galvin & Leeney, 717 Calumet Building, Hammond, Indiana.

[fol. 167]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA,
HAMMOND DIVISION.

No. 2566

[Title omitted]

Action for Damages for Breach of Contract and for
Inducing Breach and for Injunctive Relief.

NOTICE OF APPEAL—Filed August 19, 1960

Notice is hereby given that Samuel M. Atkinson, George Badis, Charles Bainbridge, Dean Bainbridge, Wilbur Beard, Paul Bennett, Vergil E. Brading, Joseph Bundek, Zoltan Cziperle, Robert V. Dermody, Frank Dicken, Thomas F. [fol. 168] Hicks, Robert Hughes, Arthur T. Juhasz, Harold Leach, Douglas Long, John Mehrbrodt, Sherman Moore, Charles Pacurar, William Padjen, Mike Payer, John J. Podraza, John Reitz, A. F. Schilling, Local 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, and Oil, Chemical and Atomic Workers International Union, AFL-CIO, a voluntary association and a labor organization, defendants above named, and each and all of them, hereby appeal to the United States Court of Appeals for the Seventh Circuit, from the order and decision of District Judge Luther Swygert, of June 23, 1960, reentered and finalized on July 21, 1960, denying defendants' motion to stay action.

Abraham W. Brussell, 318 W. Randolph Street, Chicago 6, Illinois, RAndolph 6-2922, David Cohen, 2102 Broadway, East Chicago, Indiana, EXport 7-7100, William E. Rentfro, P. O. Box 2812, Denver, Colorado, AMherst 6-0811.

[fol. 170]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. John S. Hastings, Chief Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Latham Castle, Circuit Judge.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 13092

SINCLAIR REFINING COMPANY, Petitioner,

vs.

SAMUEL M. ATKINSON, et al., Respondents.

ORDER ALLOWING APPEALS—August 25, 1960

Plaintiff having petitioned for leave to appeal in a case pending in the United States District Court for the Northern District of Indiana, Hammond Division, No. 2566, and the District Court having certified that the order which is at issue, involves a controlling question of law as to which there is substantial ground for a difference of opinion, and an immediate appeal from said order may materially advance the ultimate determination of the litigation; and on consideration of said petition and the objection filed thereto, and the briefs filed,

It Is Ordered, the petition of plaintiffs herein to appeal pursuant to Title 28, U. S. Code sec. 1292(b), be and the same is hereby granted.

[fol. 171] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 172]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

v.

SAMUEL M. ATKINSON, et al., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

v.

SAMUEL M. ATKINSON, et al., Defendants-Appellants.

Appeals from the United States District Court for the
Northern District of Indiana, Hammond Division.

OPINION—April 25, 1961

Before Schnackenberg, Castle and Major, Circuit Judges.

CASTLE, Circuit Judge. Sinclair Refining Company, plaintiff-appellant, hereinafter referred to as plaintiff, commenced this action in the District Court. It seeks damages for alleged breach of a no-strike clause of a collective bargaining agreement; a declaration of rights; and a permanent injunction.

Count I of the complaint invokes jurisdiction under Section 301 of the Labor-Management Relations Act (29 [fol. 173] U.S.C.A. § 185); names Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, as defendants; alleges in substance that

the International and Local constitute the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to plaintiff's East Chicago, Indiana, refinery, and that said Unions by their officers, committeemen and other agents caused a strike or work stoppage by approximately 999 of the employees within the bargaining unit on February 13 and 14, 1959 over asserted pay claims of three members, aggregating \$2.19, and which were arbitrable under the grievance procedure of the current collective bargaining agreement, and that the work stoppage was in violation of the no-strike clause of the agreement and caused damages to plaintiff by way of out-of-pocket expenses in the amount of \$12,500.00 for which recovery is sought.

Count II is based on diversity. It names as defendants 24 individuals, employees of plaintiff at the East Chicago refinery, who are committeemen of the Local and agents of the International. It incorporates the allegations of Count I concerning the collective agreement and it seeks damages from the individual defendants in the same amount and for the same work stoppage. It alleges that the individual defendants "contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated" in the strike or work stoppage.

Count III is based on diversity with respect to the same 24 individual defendants named in Count II and asserts jurisdiction under Section 301 of the Labor-Management Relations Act (29 U.S.C.A. § 185), as well as diversity, with respect to the Local and International Unions. In addition to the allegations of Counts I and II it alleges eight previous strikes or work stoppages at the East Chicago refinery during the term of the current collective agreement [fol. 174] ment over matters subject to its grievance procedure and provisions for arbitration, damaging plaintiff greatly in excess of \$10,000.00. It seeks a declaration of the

validity and enforceability of the no-strike and grievance provisions of the contract and a permanent injunction restraining and enjoining all of the defendants "from aiding, abetting, formenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana, refinery" covered by the current collective agreement "in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions".

The defendants filed a motion to dismiss and a motion to stay. The District Court denied the motion to stay and denied the motion to dismiss as to Count I (action against Unions for damages) but granted the motion to dismiss and entered judgment dismissing Counts II (action against individual defendants for damages) and III (declaratory and injunctive relief).

The plaintiff appealed the dismissal of Counts II and III.¹ The defendants appealed the denial of the motion to stay.² The plaintiff's appeal (Nos. 13092 and 13136) has not been consolidated with defendants' appeal (No. 13137). However, to avoid unnecessary repetition we elect to treat them as consolidated for the purpose of disposition in one opinion.

The main contested issues presented by plaintiff's appeal are:

- (1) Whether 29 U.S.C.A. § 185 precludes suit for recovery of damages from individual union officer-company employees for inducing or participating in a [fol. 175] strike or work stoppage in violation of a no-

¹ Plaintiff states that in order to avoid any question of finality of the District Court's orders both an interlocutory appeal (No. 13092) and a regular appeal (No. 13136) were perfected. Plaintiff's appeals have been consolidated.

² Defendants' appeal was perfected pursuant to 28 U.S.C.A. § 1292(a) (1).

strike clause of a collective bargaining agreement covering the unit to which they belong.

(2) Whether 29 U.C.S.A. § 101 precludes injunctive relief to restrain a future breach of a no-strike clause of a collective bargaining agreement.

Those presented by defendants' appeal are:

(1) Whether the collective bargaining agreement here involved required the employer to submit to arbitration any claim he might make for damages caused by breach of the agreement's no-strike clause.

(2) Had the employer submitted the claim to arbitration?

We will first consider the issues raised by defendants' appeal. The defendants contend that since the cause of action against the Local and International is based on an alleged violation of the no-strike clause of the collective agreement, the dispute is first subject to adjustment and determination under the arbitration procedure of the agreement and that no action can be brought until these procedures are exhausted. Defendants further contend that the causes of action against all of the defendants must be stayed until a determination of the issues raised in pending arbitrations is made because such issues are the same as those "which the plaintiff has sought the court to decide under the allegations of its complaint". This latter contention is based in part on the contents of an affidavit filed in support of the motion to stay. The affidavit recites that as a result of the work stoppage which occurred February 13 and 14, 1959 certain grievances are pending, pursuant to the grievance and arbitration procedure of the contract, involving disciplinary action taken against some of the individual defendants for allegedly fomenting, assisting and participating in such strike or work stoppage, and that the disputes which caused the eight previous work stoppages referred to in Count III of plaintiff's complaint have all been disposed of pursuant to the grievance procedure of the contract except the question of the compensation of one worker, which is the subject of a pending grievance. A

counter-affidavit filed by plaintiff discloses that the griev-
[fol. 176] ances of the individual defendants were filed sub-
sequent to the work stoppage of February 13 and 14, 1959
and involve either the three pay claims aggregating \$2.19
concerning deductions made by the plaintiff from compen-
sation of the employees because of their reporting for work
late, which deductions allegedly caused the work stoppage,
or relate to the plaintiff's refusal to compensate individual
defendants for time spent processing grievances contrary to
disciplinary restrictions imposed by plaintiff, because of the
work stoppage, on their engaging in such activity. It is fur-
ther recited that the parties have been unable to agree on a
settlement or disposition of the grievances, that both the
Union and the plaintiff have named arbitrators but that a
third or impartial arbitrator had not as yet been selected.

The collective bargaining agreement here involved is for
a term beginning June 15, 1957 and continuing to June 14,
1959 and thereafter unless terminated by either party on
sixty-days' written notice. The agreement contains both
a no-strike clause and an arbitration clause.

The no-strike clause is as follows:

"Union further agrees that during the term of this
Agreement there shall be no strikes or work stoppages:

- (1) For any cause which is or may be the subject
of a grievance under Article XXVI of this Agree-
ment, or
- (2) For any other cause, except upon written notice
by Union to Employer provided:
 - (a) That Employer within thirty (30) days
from the receipt of such notice will meet
with the representatives of the Union
and endeavor to reach an agreement on
the matter in dispute.
 - (b) In the event an agreement is not reached
within forty-five (45) days after the ex-
piration of the thirty (30) day period
specified in (a) hereof, Union, upon the
expiration of such forty-five (45) day pe-

riod, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice".

[fol. 177] Article XXVI of the agreement sets forth the grievance and arbitration procedure. It defines "grievance" as follows:

"A grievance is defined to be any difference regarding wages, hours, or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operation."

The Article then sets forth detailed provisions as to how "grievances" are to be processed and considered culminating with provisions for arbitration if the grievance is not resolved at one of the earlier stages of the procedure.

We are mindful of the congressional policy in favor of the settlement of disputes in the labor-management field through the machinery of arbitration. This was recognized in *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456, and since reconfirmed in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574, 582-583, in which the Supreme Court admonished that in the interpretation of arbitration clauses of collective bargaining agreements "[d]oubts should be resolved in favor of coverage". Nevertheless *Warrior* also affirms that "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit".

Defendants' reliance upon *Warrior* and the similar teachings found in *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, is misplaced. The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a "difference regarding wages, hours or working conditions". The claim of the employer for damages relates to neither wages, hours nor working conditions.

It does not involve a subject which it has contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the "meaning" and "application" of the agreement. Likewise distinguishable by reason of the broad [fol. 178] scope of the arbitration clauses involved are *Signal-Stat v. Local 475, United Electrical R. & M. Wkrs.*, 2 Cir., 235 F. 2d 298; *Tenney Engineering Inc. v. United Electrical, R. & M. Wkrs.*, 3 Cir., 207 F. 2d 450 and *Lewittes & Sons v. United Furniture Workers*, S.D.N.Y., 95 F. Supp. 851 cited by defendants. We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute. Cf. *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionery Workers, International AFL-CIO*, 2 Cir., F. 2d (February 17, 1961), 42 LC 16,798; *International Union v. Colonial Hardwood Floor Co.*, 4 Cir., 168 F. 2d 33, 35; *Cuneo Press, Inc. v. Kokomo Paper Handlers' Union No. 34*, 7 Cir., 235 F. 2d 108, 111, cert. den. 352 U.S. 912; *United Electrical R. & M. Wkrs. v. Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Hoover Motor Express Co. v. Teamsters, Chauffeurs, Etc.*, 6 Cir., 217 F. 2d 49, 53; *International Union v. Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536, 540-541, cert. den. 355 U.S. 814.

Nor are we impressed with defendants' contention that because certain grievances of the individual defendants have been submitted to arbitration under the provisions of the agreement plaintiff is bound to submit its claim for damages to arbitration. The employee grievances involve the pay deductions which precipitated the work stoppage and disciplinary restrictions imposed for participation therein. That some of the underlying issues which are or may become involved in the determination of those grievances may also possibly become an issue to be resolved in the ultimate adjudication of plaintiff's suit—the issues of which are yet to be framed by pleadings as yet unfiled—does not in our opinion require a stay of plaintiff's action. Plaintiff has not submitted the subject matter of its action to arbitration, nor consented to such arbitration,

merely because in conformity with its contract it is arbitrating employee grievances which involve some factors or "issues" in common with those which could possibly arise in the suit. The fact that a grievance under arbitration and a court action may share some issue or factor in common does not establish identity of subject matter. What plaintiff has submitted to arbitration under its contract to arbitrate are matters different from the subject matter of its suit. It has not agreed to arbitrate the latter—and submission to arbitration is a matter of contract.

We conclude that the District Court did not err in denying a stay of plaintiff's action.

The District Court's dismissal of Count II of the complaint was based on the view that under Section 301 of the Labor-Management Relations Act (29 U.S.C.A. § 185)^a suits of the nature alleged in Count II are no longer cognizable in state or federal courts. In our opinion the District Court erred in so concluding and in dismissing Count II. The 24 individuals named in Count II are employees of the plaintiff as well as members and officers of the Local Union and agents of the International. They were

^a Hereinafter referred to as Section 301, and which, in so far as pertinent, reads as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organizations may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

in the bargaining unit covered by the collective agreement. Whether these individuals are regarded "somewhat as" third party beneficiaries to the collective contract⁴ or that contract, though not signed by or naming them, is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire,⁵ they are bound by its provisions. *Young v. Klausner Cooperage Company*, 164 Ohio St. 489, 132 N.E. 2d 206; *Owens v. Press Publishing Co.*, 20 N.J. 537, 120 A.2d 442; *McLean Distributing Company v. Brewery and Beverage Drivers, et al.*, 254 Minn. 204, 94 N.W. 2d 514, [fol. 180] cert. den. 360 U. S. 917. The individual defendants are bound by the no-strike clause of the agreement. We do not mean to imply that the individual defendant is liable for breaches by others which he did not induce but he is liable for his own breach and any he does induce. And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so.

Count II alleges individual breaches by the 24 named defendants as well as their inducement of individual breaches by other employees. The 24 defendants are union officers presumably familiar with the terms of the agreement, including its no-strike clause. In considering a motion to dismiss, the allegations of the complaint must be viewed in the light most favorable to the plaintiff, and all facts well pleaded must be admitted and accepted as true. *Conley v. Gibson*, 355 U.S. 41. And we are not now concerned with what defenses might exist; what issues may be framed by subsequent pleading, nor with what the proof to be adduced may establish as to liability or non-liability of any of the defendants. If any set of facts provable under the allegations of Count II warrants recovery under accepted principles of law it states a cause

⁴ Cf. *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332, 336.

⁵ Cf. *Ass'n of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F. 2d 623, 627, affirmed 348 U.S. 437.

of action. *Central Ice Cream Company v. Golden Rod Ice Cream Company*, 7 Cir., 257 F. 2d 417.

Count II seeks to hold the individual defendants liable for their own acts in breach of the contract. They are under a contractual obligation not to participate in a strike or work stoppage in violation of the no-strike clause. The Count alleges such participation.

In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley v. Gye*, 2 El. & Bl. 216, 118 Eng. Reprint 749, recognizes liability for malicious interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is [fol. 181] a party to the contract. *Wade v. Culp*, 107 Ind. App. 503, 23 N.E. 2d 615.*

Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations.

We are unable to agree with the defendants that Section 301 precludes assertion of the liability of individual employees bound by a collective agreement for participating in or inducing a work stoppage in violation of the agreement's no-strike clause where the union is being sued for an alleged breach in connection with the same work stoppage. The provision that a judgment against a labor organization shall not be enforceable against its members does not in and of itself preclude action against or recovery from individual members for their individual breaches of contract. Of course there can be but one satisfaction. The observation in *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 470, relied upon by defendants, that Section

* In *Wade v. Culp* the defendant Wade, a party to the contract, was sued along with other defendants, strangers to the contract, for interfering with and inducing a breach. Cf. *Worrie v. Boze*, 198 Va. 533, 95 S.E. 2d 192 and *Motley, Green & Co. v. Detroit Steel & Spring Co.*, S.D.N.Y., 161 F. 389.

301 evidences a congressional intention that the union, like a corporation, should be the sole source of recovery was made with respect to an "injury inflicted by it", and in an entirely different context from that here involved. There are strikes or work stoppages without union participation, without the union having "called a strike" or being responsible therefor. And there can be work stoppages caused and participated in by some employees but not others.

Defendants place heavy reliance on *San Diego Building Trades Council v. Garmon*, 359 U.S. 236. But that case involved a determination of whether a state court had jurisdiction to award damages arising out of a union activity—peaceful recognition picketing—which the Supreme Court found "arguably within the compass of § 7 or § 8 of the [National Labor Relations] Act" and thus [fol. 182] within a narrow area withdrawn from possible state activity and within which state jurisdiction must yield. The conduct of the individual defendants alleged in Count II of the complaint in the instant case is neither a protected activity under § 157 nor an unfair labor practice embraced within the scope of § 158 of 29 U.S.C.A. A strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement is not an activity protected by federal law. And as conflict is the touchstone of pre-emption the rationale of *Garmon* is inapplicable to bar prosecution of Count II.

In *Wilson & Co. v. United Packinghouse Workers of America*, D.C. Iowa, 181 F. Supp. 809, relied on by defendants, the individual defendant officers of the union were sued individually and as representative of the class and membership of the Local Union in a count sounding in tort only, the claimed tort (p. 818) "being the inducing of a breach of the collective bargaining agreement". Unlike Count II of the complaint here under consideration the individual defendants were not sued in a count sounding in contract as well as in tort. But, apart from these differences, we are not disposed to follow the holding of *Wilson* that Section 301 precludes maintenance of an

¹ 29 U.S.C.A. §§ 157 and 158.

action for inducement of breach of contract against the union officers where the union also is sued for breach of contract under Section 301. That the individual defendants in Count II are officers of the Union defendants sued in Count I does not in our judgment insulate them from liability as employees of plaintiff, a status they also occupy, on the theory advanced by defendants and employed in *Wilson* that as officers of the Union they should be immune from liability for inducing a breach of *its* contract. The doctrine of *Hicks v. Haight*, 11 N.Y.S. 2d 912, that an officer of a corporation is not liable for inducing a breach of the corporation's contract is relied on by analogy to support the claimed immunity. But the New York rule is not without its limitations and is not recognized in a number of jurisdictions (Fletcher on Corporations, Vol. 3, 1947 Rev. Ed. §1001, pp. 501, 502 and 1960 Cum. Supp. pp. 56-58). In addition the no-strike clause of the collective agreement is binding on the individual defendants as employees whereas the officers or stockholders of a corporation are not personally obligated [fol. 183] on a contract of the corporation. A concise answer to *Wilson* is found in *Baun v. Lumber and Saw Mill Workers Union et al.*, 46 Wash. 2d 645, 284 P. 2d 275, 286, where it was succinctly pointed out:

"What the statute relied on [Section 301] says . . . is that a judgment against a labor organization shall not be enforceable against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur*."

It is our considered judgment that Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court. It was error to dismiss Count II.

The District Court's dismissal of Count III was predicated on its conclusion that the Norris-LaGuardia Act^{*} precludes the injunctive relief sought. Plaintiff seeks a

^{*} 29 U.S.C.A. § 101 and § 104.

permanent injunction operating *in futuro* against all of the defendants, and all to whom notice thereof might come, restraining them from any disruption of or interference with normal employment, operation or production in connection with any dispute which might be the subject of a grievance under the grievance procedure of the collective agreement, or any extension thereof, or any other such agreement containing like or similar provisions.

Norris-LaGuardia, subject to exceptions not here pertinent, withdraws jurisdiction from federal courts to issue an injunction in a case involving or growing out of a labor dispute. It is clear from the specific allegations of Count III that the conduct and work stoppages sought to be restrained are those which result from or involve labor disputes—differences concerning “wages, hours or working conditions” which are subject to the grievance and arbitration procedures. And the relief sought would clearly prohibit persons “participating or interested in such [a] dispute” from “[c]easing or refusing to perform any work . . .”

[fol. 184] In *Order of Railroad Telegraphers et al. v. Chicago & North Western Railway Co.*, 362 U.S. 330, 335, the Supreme Court after referring to the prohibitions of Section 4 of the Norris-LaGuardia Act and observing that said Act defines a labor dispute as including “any controversy concerning terms or conditions of employment . . .” stated:

“Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted.”

It is implicit in the teachings of *Railroad Telegraphers* that it is not within a court's prerogatives to impose limitations on the clearly expressed congressional policy embodied in Norris-LaGuardia and that the Act removed the

possibility of use of injunctive powers in any labor dispute absent a contrary mandate from the Congress. In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*, 353 U. S. 30, relied upon by the plaintiff, the Court had earlier found such a mandate to exist in the need to accommodate Norris-LaGuardia and the Railway Labor Act so that the obvious purpose of each of these statutes adopted as a pattern of labor legislation is preserved. The exception to the ban of Norris-LaGuardia there recognized was grounded on explicit provisions of the Railway Labor Act subjecting "minor disputes" to compulsory arbitration and declaring the Adjustment Board's decision "binding" upon both parties in order to avoid any interruption of transportation and attendant injury to the public because of such class of disputes. *Railroad Telegraphers* affirms that the doctrine of *Chicago River* operates within the narrowly confined limits of those requirements and does not even encompass other disputes in the field of railway labor-management so as to authorize injunctive relief against strikes or work stoppages involving other matters. *Locomotive Engineers v. M.K.T.R. Co.*, 363 U.S. 528.

Thus *Chicago River* is not a controlling precedent here and on the facts here alleged we find no mandate in Section 301 to which Norris-LaGuardia must accommodate. *Lincoln Mills* does not say that Section 301 authorizes injunctive relief clearly prohibited by Norris-LaGuardia. Compelling arbitration is not prohibited by Norris-LaGuardia—enjoining strikes or work stoppages is. And there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history,⁹ which evidences conflict with Norris-LaGuardia.

In so concluding we find ourselves in disagreement with *Chauffeurs, Teamsters & Helpers v. Yellow Transit Freight Lines*, 10 Cir., 282 F. 2d 345,¹⁰ but supported by *A. H. Bull Steamship Co. v. Seafarers' International Union*, 2 Cir., 250 F. 2d 326.

⁹ See legislative history appended to *Lincoln Mills*, 353 U.S. 448, 485-546.

¹⁰ Certiorari granted January 9, 1961.

Plaintiff contends that inasmuch as Count III contained a prayer that the court "declare the rights of the parties" it was error for the District Court to dismiss the Count even though injunctive relief is barred. We perceive no error in this connection. Count III does pray a declaration that the no-strike and grievance procedure clauses are legal, binding and enforceable. But no allegation is made that a controversy exist between the parties as to the validity or enforceability of either clause. The Count sets forth alternative conclusions that the conduct of defendants "shows" either that they do not regard the provisions valid and binding or deliberately violated them. Such allegation fails to charge the existence of controversy over validity or enforceability requisite to support an action for declaratory judgment.

The thoroughness of the briefs of the parties has been of material aid to the Court and although we have not made specific reference to some of the many authorities cited and analyzed therein we have considered each of the arguments advanced by the parties in support of their respective positions on the issues and discussed those we deemed necessary.

We conclude that the District Court did not err in denying the motion to stay the action nor in dismissing Count III of the complaint but did err in dismissing Count II. [fol. 186] In Appeal No. 13137 the order of the District Court denying defendants' motion to stay is affirmed.

In appeal Nos. 13092 and 13136 that portion of the judgment order of the District Court dismissing Count III of the complaint is affirmed and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

No. 13137 AFFIRMED

**Nos. 13092 and 13136 AFFIRMED IN PART,
REVERSED IN PART AND REMANDED.**

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IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13092, 13136

SINCLAIR REFINING COMPANY, Plaintiff-Appellant,

VS.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellees.

No. 13137

SINCLAIR REFINING COMPANY, Plaintiff-Appellee,

VS.

SAMUEL M. ATKINSON, ET AL., Defendants-Appellants.

Appeals from the United States District Court for the
Northern District of Indiana, Hammond Division

JUDGMENT—April 25, 1961

Before: Hon. Elmer J. Schnackenberg, Circuit Judge,
Hon. Latham Castle, Circuit Judge, Hon. J. Earl Major,
Circuit Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from in Appeal No. 13137 be, and the same is hereby, Affirmed.

It is further ordered and adjudged by this Court that in Appeal Nos. 13092 and 13136 that portion of the judg-

ment order of the District Court dismissing Count III of the complaint be, and the same is hereby, Affirmed, and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action be, and the same is hereby, Reversed, and that this cause be, and it is hereby, Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

It is further ordered and adjudged by this Court that the costs on these appeals be taxed in favor of Plaintiff, Sinclair Refining Company, and against the Defendants, Samuel M. Atkinson, et al.

[fol. 188] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 189]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1961

SAMUEL M. ATKINSON, ET AL., Petitioners,

vs.

SINCLAIR REFINING COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—July 10, 1961

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 22, 1961.

Tom C. Clark, Associate Justice of the Supreme
Court of the United States.

Dated this 10th day of July, 1961.

[fol. 190]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1961

SINCLAIR REFINING COMPANY, Petitioner,

vs.

SAMUEL M. ATKINSON, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—July 19, 1961

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 22, 1961.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of July, 1961.

[fol. 191]

SUPREME COURT OF THE UNITED STATES

No. 430, October Term, 1961

SAMUEL M. ATKINSON, ET AL., Petitioners,

vs.

SINCLAIR REFINING COMPANY

ORDER ALLOWING CERTIORARI—December 11, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 434 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 192]

SUPREME COURT OF THE UNITED STATES

No. 434, October Term, 1961

SINCLAIR REFINING COMPANY, Petitioner,

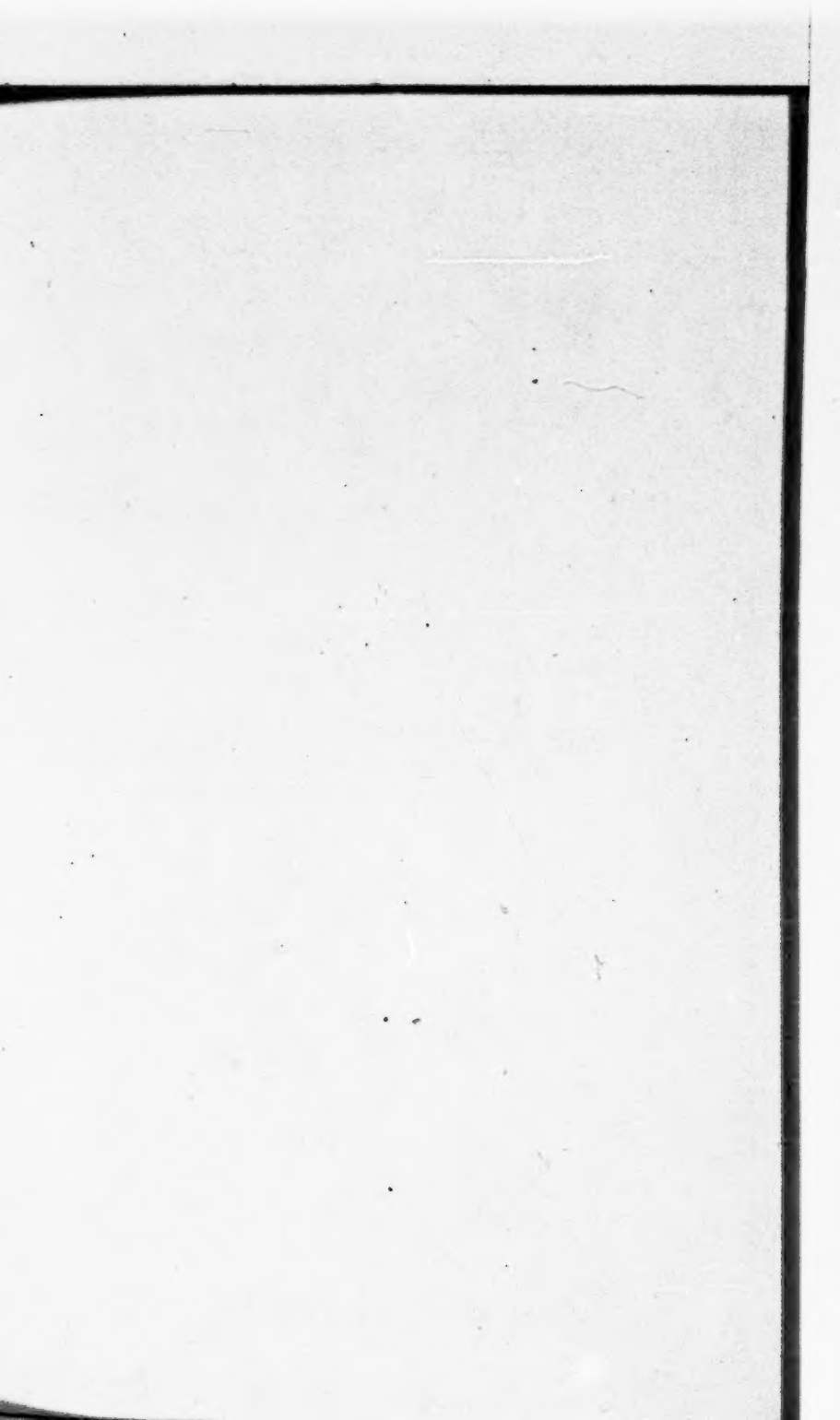
vs.

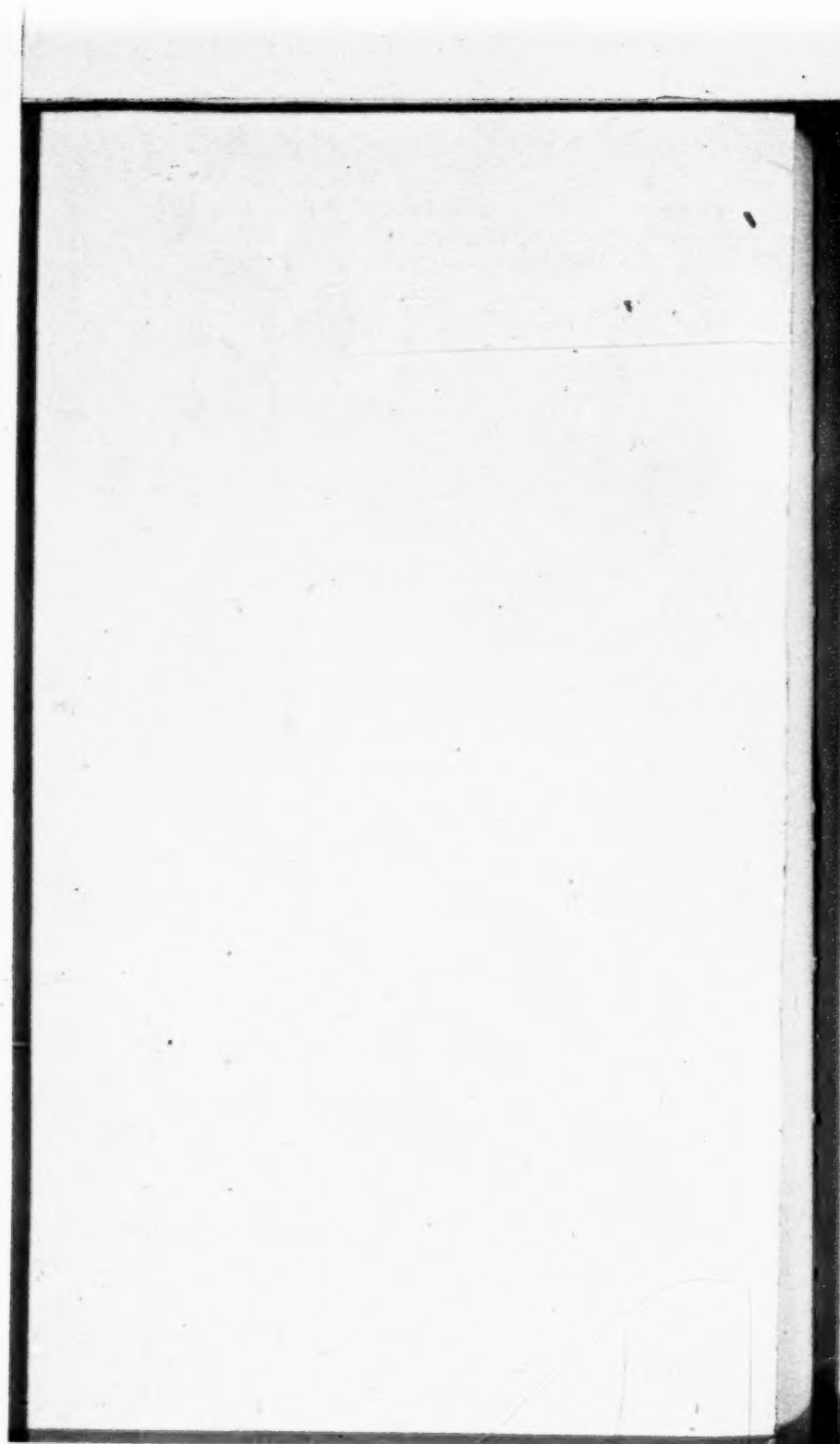
SAMUEL M. ATKINSON, ET AL.

ORDER ALLOWING CERTIORARI—December 11, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 430 and a total of two hours is allowed for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.





SEP 22 1961

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 430

SAMUEL M. ATKINSON, ET AL.,
Petitioners,
vs.

SINCLAIR REFINING COMPANY,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No.

SAMUEL M. ATKINSON, ET AL.,
Petitioners,
vs.

SINCLAIR REFINING COMPANY,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

Petitioners pray that a writ of certiorari issue to review judgments of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on April 25, 1961.

OPINIONS BELOW.

The United States District Court for the Northern District of Indiana, Hammond Division, issued an opinion on June 23, 1960. The opinion of the district court is reported in 187 F. Supp. 225 (1960), and is reprinted in Appendix A, attached hereto and made a part hereof. The opinion of the Court of Appeals is reported in 290 F. 2d 312 (1961), and is reprinted in Appendix B, which is attached hereto and made a part hereof.

JURISDICTION.

The judgment of the Court of Appeals was entered on April 25, 1961. On July 19, 1961, an order extending time for filing a petition for writ until September 22, 1961 was entered by Mr. Justice Clark. The jurisdiction of this Court is invoked under 28 USC Sec. 1254(1).

QUESTIONS PRESENTED.

This Petition raises three basic questions and a number of subsidiary issues which are presented by the decision of the Court of Appeals. These questions are outlined below:

1. The first basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause of a collective bargaining agreement brought by an employer against a union and local union officials under Section 301 of the Labor Management Relations Act (1947) as amended (61 Stat. 136; 29 U. S. C. 141) and under diversity of citizenship jurisdiction pending arbitration of the dispute pursuant to the bargaining agreement. Subsidiary questions involved in the determination of the first basic question are:

(a) Whether an employer's claim that an international union, the international's local affiliate, and local union officials participated in and instigated a work stoppage in violation of a no-strike provision of a collective bargaining agreement may be arbitrable under the arbitration provisions of the agreement.

(b) If an employer's claim of breach of a no-strike clause may be subject to arbitration, whether it is the responsibility of a federal district court or an arbitrator to determine whether or not an alleged breach

of a no-strike clause is an arbitrable issue under the terms of a particular bargaining agreement.

(c) If an employer's claim of breach of a no-strike clause is subject to the primary jurisdiction of an arbitrator, whether a federal district court is required to specifically enforce the arbitration provisions of a collective bargaining agreement under Section 301 of the Labor Management Relations Act and to thereby dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause brought by an employer pending a decision by the arbitrator.

2. The second basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of a no-strike clause of a collective bargaining agreement brought by an employer against a union and local union officials under Section 301 of the Labor Management Relations Act and under diversity of citizenship jurisdiction pending arbitration of common questions of fact and contract interpretation and application which have been raised by grievances submitted to arbitration prior to the initiation of the lawsuit attacking the right of the employer to discipline the local union officials for allegedly instigating and participating in the aforesaid breach of the no-strike clause.

3. The third basic question is whether a federal district court is required to dismiss a suit for damages brought by an employer against local union officials in their individual capacities under the court's diversity of citizenship jurisdiction for alleged participation in and instigation of a breach of a no-strike clause of a collective bargaining agreement entered into between the employer and an international union and its local affiliate. Subsidiary questions involved in the third basic question are:

(a) Whether a cause of action exists under federal

law against local union officials for alleged participation and instigation of a work stoppage in violation of a no-strike clause of the collective bargaining agreement.

(b) Whether a cause of action against local union officials in their individual capacities for the aforesaid conduct brought under the common law of the State of Indiana conflicts with federal substantive law and the jurisdiction of the National Labor Relations Board as established by Congress in the Labor Management Relations Act.

(c) Whether the no-strike clause of a collective bargaining agreement entered into between an employer and a union imposes individual contractual responsibilities on each employee running to the employer.

(d) Whether the aforesaid suit for damages against local union officials in their individual capacities is a valid cause of action cognizable under state common law.

STATUTES INVOLVED.

Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. 185, provides, in pertinent part, as follows:

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

SEC. 301. (b) Any labor organization which represents employees in an industry affecting employees in an industry affecting commerce as defined in this Act

and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

STATEMENT.

The petitioners are Oil, Chemical and Atomic Workers International Union, AFL-CIO; and its local affiliate, Local 7-210 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to, respectively, as the International Union and the Local Union), labor organizations representing the employees of the respondent; Sinclair Refining Company; and Samuel M. Atkinson and other named individual petitioners (hereinafter referred to as the Local Officials), officials of the Local Union and members of the International Union, who are employees of the Sinclair Refining Company's refinery located in East Chicago, Indiana. Sinclair Refining Company is a corporation (hereinafter referred to as the Employer) owning and operating an oil refinery in East Chicago, Indiana. The employer is alleged to be incorporated under the laws of the State of Maine and maintaining its principal office in the State of New York. The employer is engaged in an industry affecting commerce and subject to the Labor Management Relations Act, 1947.

In June, 1953, the Employer and the International and Local Unions entered into a collective bargaining agreement. This Agreement covered wages, hours and other conditions of employment. In June, 1959, the agreement expired and a new agreement was negotiated and entered

into between the Employer and the International and Local Unions.

Article III of the agreement contained a no-strike clause which is one of a type usually found in labor management contracts, limiting the right of the contracting unions to cause strikes or work stoppages during the term of the bargaining agreement. Article XXVI of the agreement contained a provision providing for the compulsory arbitration of "any difference regarding wages, hours or working conditions between the parties hereto or between the employer and an employee covered by this working agreement which might arise within any plant or with any region of operations," which could not be satisfactorily resolved through a grievance procedure or by settlement of the parties. The agreement provided that should arbitration be required, that an impartial arbitrator was to be selected by mutual understanding of the parties from a panel submitted by the Federal Mediation and Conciliation Service.

On or about February 13-14, 1959, a work stoppage took place among the employees at the employer's East Chicago refinery. Following the work stoppage, the employer disciplined twelve Local Union Officials for allegedly breaching the bargaining agreement by fomenting, assisting and participating in the work stoppage. The Local Union denied that any of the twelve officials were in any way responsible for the work stoppage and filed grievances on their behalf with the employer. The Local Union and the Employer have been unable to resolve or settle these grievances so that the question of the right of the Employer to discipline the Local Officials has been submitted to arbitration. As of this date, the dispute is still awaiting determination by arbitration and an impartial arbitrator has not as yet been appointed (Jt. App. 94-95).

During the time the Local Union was processing the

aforesaid grievances, the Employer commenced the subject lawsuit in the United States District Court for the Northern District of Indiana. The employer sought damages from the International and Local Unions and the Local Union Officials in their individual capacities, jointly and severally, in the sum of \$12,500.00 for alleged breach of the collective bargaining agreement; a declaration of rights; and a permanent injunction against the International and Local Unions; the Local Officials and agents; servants; counselors and all to whom notice may come from in any way participating in any stoppage or work interference with production under any collective bargaining agreement between the parties or any extension thereof.

The International and Local Unions and the Local Officials filed motions to dismiss, or in the alternative, to stay the action, contending:

1. That the issues in dispute were subject to the arbitration provisions of the collective bargaining contract between the unions and the employer;
2. No cause of action existed against the Union Officials in their individual capacities;
3. The action for declaratory judgment and injunction was in violation of the Norris-LaGuardia Act, 29 U. S. C., Sec. 101, and beyond the equity powers of the court (Jt. App. 89-95).

The district court dismissed the action against the Union Officials in their individual capacities, holding that union members or officers cannot be held individually liable for acts of their union in violation of a collective bargaining contract under Section 301 of the Labor Management Relations Act. It also held that under established common law principles, union officials and members cannot be held personally liable for inducing a breach of the collective bargaining contract entered into by their organization (Jt. App. 139-140). The district

court also dismissed the action for declaratory judgment and injunction against all the parties on the basis that the suit at bar involved a labor dispute within the meaning of Section 13(c) of the Norris-LaGuardia Act (Jt. App. 140-141).

The district court denied the motion to dismiss or stay the action pending arbitration of the dispute. The court held that Section 301 of the Labor Management Relations Act assigned to the courts the duty of determining whether a union had breached its promise not to strike over arbitrable grievances. The court further held that the pending grievances brought by the Local Union on behalf of the Union Officials, had no bearing on whether a breach of contract was committed by the Unions (Jt. App. 141-142).

The International and Local Unions appealed the district court's denial of their motion to dismiss or stay the action pending arbitration to the Court of Appeals for the Seventh Circuit, pursuant to Section 1292(a)(1), Title 28 of the United States Code. The employer appealed the district court's dismissal of the action against the Union Officials and its request for declaratory judgment and injunction to the Court of Appeals, pursuant to the interlocutory appeals provisions of Title 28, U. S. C., Section 1292(b).

On appeal, the Court of Appeals affirmed, in part, and reversed, in part, the district court's judgment. The dismissal of that part of the suit seeking a declaratory judgment and injunction was affirmed, the Court of Appeals sustaining the district court's holding that the Norris-LaGuardia Act barred such an action.

The Court of Appeals reversed the district court's judgment dismissing the action against the Union Officials in their individual capacities. The court held that Section 301 of the Labor Management Relations Act does not preclude liability of individual employees for partici-

pating in or inducing a work stoppage in violation of a collective bargaining agreement's no-strike clause. In support of its holding, the Court of Appeals stated in its opinion that although a judgment against a labor organization is not enforceable against its members, this fact does not effect an action against individual members for their individual breaches of contract. The Court of Appeals, in remanding this part of the case, also stated in its opinion that although "there are strikes for work stoppages without union participation * * * there can be work stoppages caused and participated in by some employees, but not others" (App. B, p. 34). In remanding the action against the Union Officials, the Court of Appeals held further that there is no conflict between a common law suit for damages against individuals for participating in any strike or work stoppage in violation of a bargaining agreement and the substantive provisions of the Labor Management Relations Act. The court also held that a suit for damages against Union Officials for participating in a breach of contract entered into by their organization did not conflict with common law precepts.

The district court's denial of a motion to dismiss or stay pending arbitration was sustained. The Court of Appeals held that the question of whether the International and Local Unions breached the no-strike provision of the collective bargaining agreement was not subject to the arbitration provisions of the agreement. The court interpreted the provisions of the agreement as precluding jurisdiction of an arbitrator over this type of dispute and rejected the Union's contention that an arbitrator should pass on this question in that a reasonable interpretation of the contract requires the arbitrator to assume jurisdiction.

The Court of Appeals also sustained the district court's holding that the pending grievances concerning the Em-

ployer's disciplinary action against the Local Officials for participating in the work stoppage were not relevant to the issues raised in the lawsuit.

This petition for writ of certiorari seeks the Court to review that part of the judgment of the Court of Appeals, affirming the district court's denial of the motion to dismiss or stay this action pending arbitration and that part reversing the order of the trial court, dismissing the action against the Union Officials in their individual capacities.

REASONS FOR GRANTING THE WRIT.

1. There is clear conflict among the circuit courts of appeal on the first basic question of whether an alleged breach of a no-strike clause of a collective bargaining agreement is an arbitrable issue. The following decisions all involved suits brought in federal district courts by employers against unions for breach of a no-strike clause of a bargaining agreement under Section 301 of the Labor Management Relations Act. The Court of Appeals for the Second Circuit in *Signal Stat. v. U. E.*, 235 F. 2d 298 (1956), cert. den'd 354 U. S. 911 (1957) stayed an action for damages and ordered the employer to submit the issue of the defendant union's alleged breach of a no-strike clause to arbitration. The same holding was reached by the Court of Appeals for the Third Circuit in *Tenney Engineering v. U. E.*, 207 F. 2d 450 (1953). Contrary decisions have been reached by the Court of Appeals for the Sixth Circuit in *International Union v. Benton Harbor Malleable Industries*, 242 F. 2d 536 (1957), cert. den'd 355 U. S. 814 (1957) and the Court of Appeals for the Fourth Circuit in *International Union v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33 (1948).

The aforementioned decisions preceded the rulings of the Supreme Court of the United States in *United Steel-*

workers v. American Manufacturing Co., 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960); *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960) and *United Steelworkers v. Enterprise Wheel & Car Company*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960). These opinions of the Court established guideposts for the federal courts in determining the arbitrability of a dispute under a collective bargaining agreement. Although federal district courts still follow the decisions of their courts of appeals in deciding whether an arbitrator or the court has primary jurisdiction over strikes and work stoppages during the life of a bargaining agreement, there is a serious question whether the opinions of the courts of appeal denying jurisdiction to an arbitrator have vitality since the decisions of this Court in *American Manufacturing*, *Warrior and Gulf* and *Enterprise Wheel*.

The issue on which this conflict rests is of significance and immediate importance to the course of labor-management relations today. The history of collective bargaining in the post-war era has been marked by the development of an extensive arbitration process for resolving disputes during the life of collective bargaining agreements. Decisions of the Supreme Court have reflected this development in recognizing and enforcing the primary jurisdiction of arbitration over labor disputes.

The Court established the principle of the enforceability of mutual obligations of unions and employers to arbitrate in *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957). Subsequently, the arbitration process was given greater breadth and significance by this Court's decisions in *American Manufacturing*, *Warrior and Gulf* and *Enterprise Wheel* through reaffirmation of the enforcement principle, coupled with marked restrictions on the district court's power in limit-

ing the authority of an arbitrator to decide his own jurisdiction and the merits of a controversy. The decision of the Court of Appeals for the Seventh Circuit in this case and other like decisions from other courts of appeal would carve out an exception to the arbitrator's jurisdiction in the case of strikes and work stoppages. It is apparent that it is of the utmost importance to the future course of collective bargaining that this Court determine whether labor management difficulties culminating in strikes and work stoppages during the term of a bargaining agreement are to be mainly resolved through the judicial processes or the arbitration system.

2. The second basic question is entwined with the first. Both the district court and the court of appeals refused to stay the action pending the resolution of whether the Employer had the right to discipline the Union Officials for engaging in the work stoppage, holding that this question was irrelevant to the controversy at law. The district court and the court of appeals founded their decision on the basic proposition that the arbitration process has no bearing on a suit for damages for breach of a collective bargaining agreement brought under Section 301 of the Labor Management Relations Act. The fundamental issue in the second basic question, we believe, will be resolved once this Court determines to what extent, if any, suits brought under Section 301 are limited by the arbitration provisions of a bargaining agreement.

3. The third basic question involves some of the most important and current unresolved issues in the labor law field. The Court of Appeals' decision reversing the district court and allowing a suit for damages against the Local Officials in their individual capacities, is squarely in conflict with the decision of the Federal District Court for Iowa in *Wilson and Co. v. United Packinghouse Workers*, 181 F. Supp. 809 (D. C. Iowa, 1960). This conflict was

clearly underscored by the Court of Appeals on pages 11-12 of its opinion (App. A). The suit against the Local Officials was founded on state common law and brought under diversity of citizenship jurisdiction. There is an important decision by the highest court of the State of Washington, which is contrary to the decision of the Federal District Court of Iowa and the district court in the present action and in support of the decision of the Court of Appeals. In *Baun v. Lumber and Saw Mill Workers*, 6 Wash. 2d 645, 284 P. 2d 275 (1955) the state court held that the Labor Management Relations Act did not effectively prohibit common law actions against individual union members and officials for participation in violations of collective bargaining agreements.

In addition to the direct conflict that exists between the aforementioned decisions, there are important decisions of this Court which directly affect this controversy. In *Lincoln Mills*, the Supreme Court held that Section 301 of the Labor Management Relations Act forged the creation of a body of federal substantive law for the interpretation and enforcement of collective bargaining agreements. In *Westinghouse Employees v. Westinghouse Corp.*, 348 U. S. 487, 99 L. Ed. 510, 76 S. Ct. 488 (1955) this Court held that Section 301 did not allow for any suits by or against individuals for breach of bargaining agreements. In *Lewis and Benedict Coal Corp.*, 361 U. S. 459 (1960) the Court clearly distinguished between the obligations of a union as an organizational entity under a bargaining agreement and the personal rights and interests of employees covered by the agreement. The present case raises the question whether the impact of this series of Supreme Court decisions establishes Section 301 as the exclusive authority controlling suits for violations of bargaining agreements.

In addition to the aforementioned decisions of this Court, the petitioners further submit that *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959) is controlling. We submit that since the *Garmon* decision, state courts and federal courts under diversity of citizenship jurisdiction cannot assume jurisdiction over a labor controversy which may come under the purview of the Labor Management Relations Act. The question thereby to be resolved by this Court is whether the *Garmon* decision is to be understood in light of *Westinghouse* and *Lincoln Mills* so as to exclude state common law actions based on breaches of collective bargaining agreements or whether the *Garmon* decision is limited only to common law suits which may conflict with the jurisdiction of the National Labor Relations Board.

Even if this Court were to so limit the *Garmon* decision to common law actions which may be in conflict with the National Labor Relations Board, the issues presented by the present action would still be unresolved. We submit that the decision of this Court in *Mastro Plastics Corp. v. N. L. R. B.*, 350 U. S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956) controls this issue. In that case, the Supreme Court held that a work stoppage during the life of a no-strike clause may be protected activity under Section 7 of the Labor Management Relations Act and, therefore, within the primary jurisdiction of the National Labor Relations Board.

Whether or not a common law action can be maintained against union members and officials in their individual capacities there still remains the important question of whether the action conforms with common law precedent. The District Court for Iowa in *Wilson and Co. v. United Packinghouse Workers* held that basic tort and contract principles did not allow an action against union officials, in their individual capacities, as agents of their organiza-

tion for a breach of contract entered into by their organization. The Court of Appeals for the Seventh Circuit rejected the district court's interpretation of the common law in holding that Union Officers are not insulated from liability as employees of an employer for inducing a breach of the bargaining agreement entered into by the employer.

We invite the Court's attention to a recent article directly focusing on many of the issues raised by this Petition. Richard A. Givens, *Responsibility of Individual Employees for Breaches of No-Strike Clauses*, Vol. 14 Ind. & Lab. Rel. Rev. 595 (July, 1961).

In sum, the issues presented by this Petition for Writ of Certiorari involve direct conflict between the circuit courts of appeal. A review by the Supreme Court would also resolve significant questions concerning the application of recent decisions of this Court to the type of labor management disputes which underlie this action.

CONCLUSION.

For the reasons stated, it is respectfully submitted that this Petition for a Writ of Certiorari be granted.

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APPENDIX A.

THE UNITED STATES DISTRICT COURT
Northern District of Indiana,
Hammond Division.

Sinclair Refining Company
vs.
Samuel M. Atkinson, et al. } No. 2566 Civil.

MEMORANDUM OF DECISION.

The matter is before the court principally on a motion to vacate its order of March 12, 1960, and to grant a rehearing on several motions which were the subject of the March 12th order.

A rehearing has been afforded the defendants. After oral argument and submission of briefs on the motion for rehearing, I have come to the conclusion that the March 12th order should be vacated and a new order entered which modifies substantially the older order. A memorandum setting forth the reasons for the new order seems appropriate.

Dismissal of Count I.

As I understand defendants' contention, it is that if there are possibly protected or prohibited union activities under §§ 7 and 8 of the Labor Management Relations Act involved in the factual situation whereby the "no-strike" agreement was allegedly breached, the court cannot enter-

tain jurisdiction under § 301 of the Act. They cite *San Diego Bldg. Trades Council v. Garmon*, 359 U. S. 236, and *Plumbers v. County of Door*, 359 U. S. 354.

The *Garmon* and *Door* cases dealt with pre-emption of state-court jurisdiction where there were present or arguably present protected or prohibited union activities which came within the jurisdiction of National Labor Relations Board under §§ 7, 8 and 10 of the Act. Neither case presented the problem of a conflict between the jurisdiction of the Board and the courts because of a possible overlap of activities protected or prohibited by §§ 7 and 8 and at the same time the basis for a violation of a labor contract enforceable under § 301.

The alleged violation of a collective bargaining contract is the basis of Count I. There is nothing in the record at this point to indicate that the events claimed to constitute a violation of the contract also involved either protected or prohibited activity. But even the presence of such activities would not give preferential jurisdiction to the Board and oust that of the courts. The responsibility of enforcing labor contracts lies in the courts; otherwise there would have been no need for enacting § 301.

Dismissal of Count II.

The Court's attention has been called to two cases not considered at the time the motion to dismiss was originally ruled upon, *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, and *Wilson & Co. v. United Packinghouse Wkrs. of America*, 181 F. Supp. 809 (N. D. Iowa, 1960).

Judge Craven in the *Wilson* case, after an exhaustive discussion of the identical problem, concluded that the officers of the labor union are not individually liable for the inducement of a breach of a collective bargaining

contract where the union is being sued under § 301 of the Taft-Hartley Act for the breach. In his opinion, Judge Craven cited the *Lewis* case in support of his conclusion. In that case the Supreme Court in the majority opinion stated:

“Section 301(b) of the Taft-Hartley Act provides that ‘any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.’ At the least this evidences a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it. * * *.”

It is clear from the language in the *Lewis* case that a labor union when sued under § 301 must be treated as if it were a corporation. It is also made clear that union members or officers cannot be held individually liable for acts of the union, as, similarly, stockholders and officers of a corporation are not liable for corporate acts.

It is generally the law that officers and employees of a corporation cannot be held liable for inducing a breach of its contract. *Wilson & Co. v. United Packinghouse Wkrs. of America*, *supra*; 30 *Am. Jur., Interference*, § 37; *Hicks v. Haight*, 171 Misc. 151, 11 N. Y. S. 2d 912 (1939); 26 *A. L. R.* 2d 1270. By analogy, and having in mind the language in the *Lewis* case, a union member or officer cannot be held liable for inducing the breach of a union contract.

The fact that Count II is based on diversity jurisdiction is not determinative of the motion. Section 301 is more than a procedural statute; it is also substantive. The section is the statutory source of federal law governing remedies for violations of collective bargaining contracts.

Textile Wkrs. etc. v. Lincoln Mills of Alabama, 353 U. S. 448.

Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under § 301 as that section has been construed by the Supreme Court, the conclusion is inevitable that suits of the nature alleged in Count II are no longer cognizable in state or federal courts.

Dismissal of Count III.

Plaintiff urges that since *Lincoln Mills* allowed specific enforcement of the agreement to arbitrate the case now compels specific enforcement of the no-strike agreement received in exchange for the promise to arbitrate. It contends that the Norris-LaGuardia Act should not preclude injunctive relief in the case at bar because the conditions which prompted passage of that Act no longer obtain.

That the suit at bar involves a labor dispute within the meaning of § 13(c) of the Norris-LaGuardia Act is beyond dispute. That it also involves an alleged breach of a no-strike clause of a collective bargaining agreement does not alter the fact a labor dispute exists under the definition of § 13(c) of the Act. *A. H. Bull Steamship Co. v. National-Marine Eng. B. Assn.*, 250 F. 2d 332.

Since the original ruling on the motion to dismiss Count III, the Supreme Court decided *The Order of Railroad Telegraphers, et al. v. Chicago & N. Western R. Co.*, on April 18, 1960. In that case the Supreme Court left no doubt that § 4 of the Norris-LaGuardia Act withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal "to perform work or remain in any relation of employment" in cases involving *any* labor dispute.

Upon reconsideration and in light of the opinion in *Railroad Telegraphers*, I have come to the conclusion that *Lincoln Mills* does not remove the sweep of the Norris-LaGuardia Act so as to permit the specific enforcement of a no-strike clause in a labor contract.

Motion to Stay.

Defendants seek a stay of the action on the ground that certain grievances filed as the result of the strike or work stoppage alleged in the complaint are subject to arbitration in accordance with the procedure outlined in the contract. In my opinion the resolution of these grievances by arbitration would not decide whether there was a strike or work stoppage and whether there occurred thereby a breach of the contract by the union which promised not to permit work stoppages or strikes over matters which are subject to arbitration. *Lincoln Mills* permits a labor union to sue under § 301 for specific performance of a promise by the employer to arbitrate grievances defined in the collective bargaining agreement. For similar reasons, the employer has the right under § 301 to sue the union for a violation of the no-strike clause.

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, decided by the Supreme Court on June 20, 1960, the majority opinion said in part:

“The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate.”

Paraphrasing the above language, Congress by § 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances.

The arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from ~~the issue whether the union violated its contract~~ For that reason the motion to stay must be denied.

/s/ Luther M. Swygert,
United States District Judge.

Hammond, Indiana,
June 23, 1960.

APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS
for the Seventh Circuit.

September Term, 1960—April Session, 1961.

Nos. 13092, 13136

Sinclair Refining Company,
Plaintiff-Appellant,
vs.

Samuel M. Atkinson, et al.,
Defendants-Appellees.

No. 13137

Sinclair Refining Company,
Plaintiff-Appellee,
vs.

Samuel M. Atkinson, et al.,
Defendants-Appellants.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Indiana, Ham-
mond Division.

April 25, 1961

Before SCHNACKENBERG, CASTLE and MAJOR, *Circuit Judges.*

CASTLE, *Circuit Judge.* Sinclair Refining Company, plaintiff-appellant, hereinafter referred to as plaintiff, commenced this action in the District Court. It seeks damages for alleged breach of a no-strike clause of a collective bargaining agreement; a declaration of rights; and a permanent injunction.

Count I of the complaint invokes jurisdiction under

Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185); names Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, as defendants; alleges in substance that the International and Local constitute the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to plaintiff's East Chicago, Indiana, refinery, and that said Unions by their officers, committeemen and other agents caused a strike or work stoppage by approximately 999 of the employees within the bargaining unit on February 13 and 14, 1959 over asserted pay claims of three members, aggregating \$2.19, and which were arbitrable under the grievance procedure of the current collective bargaining agreement, and that the work stoppage was in violation of the no-strike clause of the agreement and caused damages to plaintiff by way of out-of-pocket expenses in the amount of \$12,500.00 for which recovery is sought.

Count II is based on diversity. It names as defendants 24 individuals, employees of plaintiff at the East Chicago refinery, who are committeemen of the Local and agents of the International. It incorporates the allegations of Count I concerning the collective agreement and it seeks damages from the individual defendants in the same amount and for the same work stoppage. It alleges that the individual defendants "contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated" in the strike or work stoppage.

Count III is based on diversity with respect to the same 24 individual defendants named in Count II and asserts jurisdiction under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185), as well as diversity, with respect to the Local and International Unions. In addition to the allegations of Counts I and II it alleges eight previous strikes or work stoppages at the East Chicago refining during the term of the current collective agreement over matters subject to its grievance procedure and provisions for arbitration, damaging plaintiff greatly in excess of \$10,000.00. It seeks a declaration of the validity and enforceability of the no-strike and grievance provisions of the contract and a permanent injunction restraining and enjoining all of the defendants "from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana, refinery" covered by the current collective agreement "in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions".

The defendants filed a motion to dismiss and a motion to stay. The District Court denied the motion to stay and denied the motion to dismiss as to Count I (action against Unions for damages) but granted the motion to dismiss and entered judgment dismissing Counts II (action against individual defendants for damages) and III (declaratory and injunctive relief).

The plaintiff appealed the dismissal of Counts II and III.¹ The defendants appealed the denial of the motion to stay.² The plaintiff's appeal (Nos. 13092 and 13136) has not been consolidated with defendants' appeal (No. 13137). However, to avoid unnecessary repetition we elect to treat them as consolidated for the purpose of disposition in one opinion.

The main contested issues presented by plaintiff's appeal are:

- (1) Whether 29 U. S. C. A. § 185 precludes suit for recovery of damages from individual union officer-company employees for inducing or participating in a strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement covering the unit to which they belong.
- (2) Whether 29 U. S. C. A. § 101 precludes injunctive relief to restrain a future breach of a no-strike clause of a collective bargaining agreement.

Those presented by defendants' appeal are:

- (1) Whether the collective bargaining agreement here involved required the employer to submit to arbitration any claim he might make for damages caused by breach of the agreement's no-strike clause.
- (2) Had the employer submitted the claim to arbitration?

We will first consider the issues raised by defendants' appeal. The defendants contend that since the cause of action against the Local and International is based on an alleged violation of the no-strike clause of the collective agreement, the dispute is first subject to adjustment and

1. Plaintiff states that in order to avoid any question of finality of the District Court's orders both an interlocutory appeal (No. 13092) and a regular appeal (No. 13136) were perfected. Plaintiff's appeals have been consolidated.

2. Defendants' appeal was perfected pursuant to 28 U. S. C. A. § 1292 (a) (1).

determination under the arbitration procedure of the agreement and that no action can be brought until these procedures are exhausted. Defendants further contend that the causes of action against all of the defendants must be stayed until a determination of the issues raised in pending arbitrations is made because such issues are the same as those "which the plaintiff has sought the court to decide under the allegations of its complaint". This latter contention is based in part on the contents of an affidavit filed in support of the motion to stay. The affidavit recites that as a result of the work stoppage which occurred February 13 and 14, 1959 certain grievances are pending, pursuant to the grievance and arbitration procedure of the contract, involving disciplinary action taken against some of the individual defendants for allegedly commenting, assisting and participating in such strike or work stoppage, and that the disputes which caused the eight previous work stoppages referred to in Count III of plaintiff's complaint have all been disposed of pursuant to the grievance procedure of the contract except the question of the compensation of one worker, which is the subject of a pending grievance. A counter-affidavit filed by plaintiff discloses that the grievances of the individual defendants were filed subsequent to the work stoppage of February 13 and 14, 1959 and involve either the three day claims aggregating \$2.19 concerning deductions made by the plaintiff from compensation of the employees because of their reporting for work late, which deductions allegedly caused the work stoppage, or relate to the plaintiff's refusal to compensate individual defendants for time spent processing grievances contrary to disciplinary restrictions imposed by plaintiff, because of the work stoppage, on their engaging in such activity. It is further recited that the parties have been unable to agree on a settlement or disposition of the grievances, that both the

Union and the plaintiff have named arbitrators but that a third or impartial arbitrator had not as yet been selected.

The collective bargaining agreement here involved is for a term beginning June 15, 1957 and continuing to June 14, 1959 and thereafter unless terminated by either party on sixty-days' written notice. The agreement contains both a no-strike clause and an arbitration clause.

The no-strike clause is as follows:

"Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

- (1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or
- (2) For any other cause, except upon written notice by Union to Employer provided:
 - (a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.
 - (b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice" * * *

Article XXVI of the agreement sets forth the grievance and arbitration procedure. It defines "grievance" as follows:

"A grievance is defined to be any difference regarding wages, hours, or working conditions between the parties hereto or between the Employer and an em-

ployee covered by this working agreement which might arise within any plant or within any region of operation."

The Article then sets forth detailed provisions as to how "grievances" are to be processed and considered culminating with provisions for arbitration if the grievance is not resolved at one of the earlier stages of the procedure.

We are mindful of the congressional policy in favor of the settlement of disputes in the labor-management field through the machinery of arbitration. This was recognized in *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 456, and since reconfirmed in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U. S. 574, 582-583, in which the Supreme Court admonished that in the interpretation of arbitration clauses of collective bargaining agreements "[d]oubts should be resolved in favor of coverage". Nevertheless *Warrior* also affirms that "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit".

Defendants' reliance upon *Warrior* and the similar teachings found in *United Steelworkers of America v. American Manufacturing Company*, 363 U. S. 564 and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, is misplaced. The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a "difference regarding wages, hours or working conditions." The claim of the employer for damages relates to neither wages, hours nor working conditions. It does not involve a subject which it has contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the "meaning" and "ap-

plication'' of the agreement. Likewise distinguishable by reason of the broad scope of the arbitration clauses involved are *Signal-Stat v. Local 475, United Electrical R. & M. Wkrs.*, 2 Cir., 235 F. 2d 298; *Tenney Engineering Inc. v. United Electrical, R. & M. Wkrs.*, 3 Cir., 207 F. 2d 450 and *Lewittes & Sons v. United Furniture Workers*, S. D. N. Y., 95 F. Supp. 851 cited by defendants. We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute. (Cf. *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionery Workers, International, AFL-CIO*, 2 Cir., _____ F. 2d _____ (February 17, 1961), 42 LC 16,798; *International Union v. Colonial Hardwood Floor. Co.*, 4 Cir., 168 F. 2d 33, 35; *Cunco Press, Inc. v. Kokomo Paper Handlers' Union No. 34*, 7 Cir., 235 F. 2d 108, 111, cert. den. 352 U. S. 912; *United Electrical R. & M. Wkrs. v. Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Hoover Motor Express Co. v. Teamsters, Chauffeurs, Etc.*, 6 Cir., 217 F. 2d 49, 53; *International Union v. Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536, 540-541, cert. den. 355 U. S. 814.

Nor are we impressed with defendants' contention that because certain grievances of the individual defendants have been submitted to arbitration under the provisions of the agreement plaintiff is bound to submit its claim for damages to arbitration. The employee grievances involve the pay deductions which precipitated the work stoppage and disciplinary restrictions imposed for participation therein. That some of the underlying issues which are or may become involved in the determination of those grievances may also possibly become an issue to be resolved in the ultimate adjudication of plaintiff's suit—the issues of which are yet to be framed by pleadings as yet unfilled—does not in our opinion require a stay of plaintiff's

action. Plaintiff has not submitted the subject matter of its action to arbitration, nor consented to such arbitration, merely because in conformity with its contract it⁴ is arbitrating employee grievances which involve some factors or "issues" in common with those which could possibly arise in the suit. The fact that a grievance under arbitration and a court action may share some issue or factor in common does not establish identity of subject matter. What plaintiff has submitted to arbitration under its contract to arbitrate are matters different from the subject matter of its suit. It has not agreed to arbitrate the latter—and submission to arbitration is a matter of contract.

We conclude that the District Court did not err in denying a stay of plaintiff's action.

The District Court's dismissal of Count II of the complaint was based on the view that under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185)² suits of the nature alleged in Count II are no longer cognizable in state or federal courts. In our opinion the District Court erred in so concluding and in dismissing Count

3. Hereinafter referred to as Section 301, and which, in so far as pertinent, reads as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organizations may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

II. The 24 individuals named in Count II are employees of the plaintiff as well as members and officers of the Local Union and agents of the International. They were in the bargaining unit covered by the collective agreement. Whether these individuals are regarded "somewhat as" third party beneficiaries to the collective contract⁴ or that contract, though not signed by or naming them, is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire⁵, they are bound by its provisions. *Young v. Klausner Cooperage Company*, 164 Ohio St. 489, 132 N. E. 2d 206; *Owens v. Press Publishing Co.*, 20 N. J. 537, 120 A. 2d 442; *McLean Distributing Company v. Brewery and Beverage Drivers, et al.*, 254 Minn. 204, 94 N. W. 2d 514, cert. den. 360 U. S. 917. The individual defendants are bound by the no-strike clause of the agreement. We do not mean to imply that the individual defendant is liable for breaches by others which he did not induce but he is liable for his own breach and any he does induce. And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so.

Count II alleges individual breaches by the 24 named defendants as well as their inducement of individual breaches by other employees. The 24 defendants are union officers presumably familiar with the terms of the agreement, including its no-strike clause. In considering a motion to dismiss, the allegations of the complaint must be viewed in the light most favorable to the plaintiff, and

4. Cf. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332, 336.

5. Cf. *Ass'n of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F. 2d 623, 627, affirmed 348 U. S. 437.

all facts well pleaded must be admitted and accepted as true. *Conley v. Gibson*, 355 U. S. 41. And we are not now concerned with what defenses might exist; what issues may be framed by subsequent pleading, nor with what the proof to be adduced may establish as to liability or non-liability of any of the defendants. If any set of facts provable under the allegations of Count II warrants recovery under accepted principles of law it states a cause of action. *Central Ice Cream Company v. Golden Rod Ice Cream Company*, 7 Cir., 257 F. 2d 417.

Count II seeks to hold the individual defendants liable for their own acts in breach of the contract. They are under a contractual obligation not to participate in a strike or work stoppage in violation of the no-strike clause. The Count alleges such participation.

In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley v. Gye*, 2 El. & Bl. 216, 118 Eng. Reprint 749, recognizes liability for malicious interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is a party to the contract. *Wade v. Culp*, 107 Ind. App. 503, 23 N. E. 2d 615.⁶

Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations.

6. In *Wade v. Culp* the defendant Wade, a party to the contract, was sued along with other defendants, strangers to the contract, for interfering with and inducing a breach. Cf. *Warrie v. Boze*, 198 Va. 533, 95 S. E. 2d 192 and *Motley, Green & Co. v. Detroit Steel & Spring Co.*, S. D. N. Y., 161 F. 389.

We are unable to agree with the defendants that Section 301 precludes assertion of the liability of individual employees bound by a collective agreement for participating in or inducing a work stoppage in violation of the agreement's no-strike clause where the union is being sued for an alleged breach in connection with the same work stoppage. The provision that a judgment against a labor organization shall not be enforceable against its members does not in and of itself preclude action against or recovery from individual members for their individual breaches of contract. Of course there can be but one satisfaction. The observation in *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, 470, relied upon by defendants, that Section 301 evidences a congressional intention that the union, like a corporation, should be the sole source of recovery was made with respect to an "injury inflicted by it", and in an entirely different context from that here involved. There are strikes or work stoppages without union participation, without the union having "called a strike" or being responsible therefor. And there can be work stoppages caused and participated in by some employees but not others.

Defendants place heavy reliance on *San Diego Building Trades Council v. Garmon*, 359 U. S. 236. But that case involved a determination of whether a state court had jurisdiction to award damages arising out of a union activity—peaceful recognition picketing—which the Supreme Court found "arguably within the compass of § 7 or § 8 of the [National Labor Relations] Act" and thus within a narrow area withdrawn from possible state activity and within which state jurisdiction must yield. The conduct of the individual defendants alleged in Count II of the complaint in the instant case is neither a protected activity under § 157 nor an unfair labor practice embraced within

7. 29 U. S. C. A. §§ 157 and 158.

the scope of § 158 of 29 U. S. C. A. A strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement is not an activity protected by federal law. And as conflict is the touchstone of pre-emption the rationale of *Garmon* is inapplicable to bar prosecution of Count II.

In *Wilson & Co. v. United Packinghouse Workers of America*, D. C. Iowa, 181 F. Supp. 809, relied on by defendants, the individual defendant officers of the union were sued individually and as representative of the class and membership of the Local Union in a count sounding in tort only, the claimed tort (p. 818) "being the inducing of a breach of the collective bargaining agreement". Unlike Count II of the complaint here under consideration the individual defendants were not sued in a count sounding in contract as well as in tort. But, apart from these differences, we are not disposed to follow the holding of *Wilson* that Section 301 precludes maintenance of an action for inducement of breach of contract against the union officers where the union also is sued for breach of contract under Section 301. That the individual defendants in Count II are officers of the Union defendants sued in Count I does not in our judgment insulate them from liability as employees of plaintiff, a status they also occupy, on the theory advanced by defendants and employed in *Wilson* that as officers of the Union they should be immune from liability for inducing a breach of its contract. The doctrine of *Hicks v. Haight*, 11 N. Y. S. 2d 912, that an officer of a corporation is not liable for inducing a breach of the corporation's contract is relied on by analogy to support the claimed immunity. But the New York rule is not without its limitations and is not recognized in a number of jurisdictions (*Fletcher on Corporations*, Vol. 3, 1947 Rev. Ed. § 1001, pp. 501, 502 and 1960 Cum. Supp. pp. 56-58). In addition the no-strike

clause of the collective agreement is binding on the individual defendants as employees whereas the officers or stockholders of a corporation are not personally obligated on a contract of the corporation. A concise answer to *Wilson* is found in *Baun v. Lumber and Saw Mill Workers Union et al.*, 46 Wash. 2d 645, 284 P. 2d 275, 286, where it was succinctly pointed out:

“What the statute relied on [Section 301] says . . . is that a judgment against a labor organization shall not be enforceable against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur*.”

It is our considered judgment that Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court. It was error to dismiss Count II.

The District Court's dismissal of Count III was predicated on its conclusion that the Norris-LaGuardia Act⁸ precludes the injunctive relief sought. Plaintiff seeks a permanent injunction operating *in futuro* against all of the defendants, and all to whom notice thereof might come, restraining them from any disruption of or interference with normal employment, operation or production in connection with any dispute which might be the subject of a grievance under the grievance procedure of the collective agreement, or any extension thereof, or any other such agreement containing like or similar provisions.

Norris-LaGuardia, subject to exceptions not here pertinent, withdraws jurisdiction from federal courts to issue an injunction in a case involving or growing out of a labor dispute. It is clear from the specific allegations of Count III that the conduct and work stoppages sought to be

8. 29 U. S. C. A. § 101 and § 104.

restrained are those which result from or involve labor disputes—differences concerning “wages, hours or working conditions” which are subject to the grievance and arbitration procedures. And the relief sought would clearly prohibit persons “participating or interested in such [a] dispute” from “[c]easing or refusing to perform any work * * *”

In *Order of Railroad Telegraphers et al. v. Chicago & North Western Railway Co.*, 362 U. S. 330, 335, the Supreme Court after referring to the prohibitions of Section 4 of the Norris-LaGuardia Act and observing that said Act defines a labor dispute as including “any controversy concerning terms or conditions of employment * * *” stated:

“Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted.”

It is implicit in the teachings of *Railroad Telegraphers* that it is not within a court's prerogatives to impose limitations on the clearly expressed congressional policy embodied in Norris-LaGuardia and that the Act removed the possibility of use of injunctive powers in any labor dispute absent a contrary mandate from the Congress. In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*, 353 U. S. 30, relied upon by the plaintiff, the Court had earlier found such a mandate to exist in the need to accommodate Norris-LaGuardia and the Railway Labor Act so that the obvious purpose of each of these statutes adopted as a pattern of labor legislation is preserved. The exception to the ban of Norris-LaGuardia

there recognized was grounded on explicit provisions of the Railway Labor Act subjecting "minor disputes" to compulsory arbitration and declaring the Adjustment Board's decision "binding" upon both parties in order to avoid any interruption of transportation and attendant injury to the public because of such class of disputes. *Railroad Telegraphers* affirms that the doctrine of *Chicago River* operates within the narrowly confined limits of those requirements and does not even encompass other disputes in the field of railway labor-management so as to authorize injunctive relief against strikes or work stoppages involving other matters. *Locomotive Engineers v. M. K. T. R. Co.*, 363 U. S. 528.

Thus *Chicago River* is not a controlling precedent here and on the facts here alleged we find no mandate in Section 301 to which Norris-LaGuardia must accommodate. *Lincoln Mills* does not say that Section 301 authorizes injunctive relief clearly prohibited by Norris-LaGuardia. Compelling arbitration is not prohibited by Norris-LaGuardia—enjoining strikes or work stoppages is. And there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history,⁹ which evidences conflict with Norris-LaGuardia.

In so concluding we find ourselves in disagreement with *Chauffeurs, Teamsters & Helpers v. Yellow Transit Freight Lines*, 10 Cir., 282 F. 2d 345,¹⁰ but supported by *A. H. Bull Steamship Co. v. Seafarers' International Union*, 2 Cir., 250 F. 2d 326.

Plaintiff contends that inasmuch as Count III contained a prayer that the court "declare the rights of the parties" it was error for the District Court to dismiss the Count even though injunctive relief is barred. We perceive no

9. See legislative history appended to *Lincoln Mills*, 353 U. S. 448, 485-546.

10. Certiorari granted January 9, 1961.

error in this connection. Count III does pray a declaration that the no-strike and grievance procedure clauses are legal, binding and enforceable. But no allegation is made that a controversy exists between the parties as to the validity or enforceability of either clause. The Count sets forth alternative conclusions that the conduct of defendants "shows" either that they do not regard the provisions valid and binding or deliberately violated them. Such allegation fails to charge the existence of controversy over validity or enforceability requisite to support an action for declaratory judgment.

The thoroughness of the briefs of the parties has been of material aid to the Court and although we have not made specific reference to some of the many authorities cited and analyzed therein we have considered each of the arguments advanced by the parties in support of their respective positions on the issues and discussed those we deemed necessary.

We conclude that the District Court did not err in denying the motion to stay the action nor in dismissing Count III of the complaint but did err in dismissing Count II.

In Appeal No. 13137 the order of the District Court denying defendants' motion to stay is affirmed.

In appeal Nos. 13092 and 13136 that portion of the judgment order of the District Court dismissing Count III of the complaint is affirmed and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

NO. 13137 AFFIRMED,

NOS. 13092 AND 13136 AFFIRMED IN PART,

REVERSED IN PART AND REMANDED.

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OCT 5 1961

JAMES R. BROWNING, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 430

SAMUEL M. ATKINSON, ET AL.,
Petitioners,

vs.

SINCLAIR REFINING COMPANY,
Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

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STATEMENT.

Relevant contract provisions (A. 25) not set forth in the
Petition for Certiorari are as follows:

"ARTICLE III.

* * * * *

"3. Union further agrees that during the term of
this Agreement there shall be no strikes or work
stoppages:

"(1) For any cause which is or may be the subject
of a grievance under Article XXVI of this
Agreement, * * *"

"ARTICLE XXVI.**"GRIEVANCE AND ARBITRATION PROCEDURE.****"DEFINITION.**

"1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations.

"GRIEVANCE PROCEDURE.

"It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed:

"2. For the purpose of adjusting employee grievances and disputes as defined above, it is agreed that any employee, individually or accompanied by his committeeman, if desired shall:

"(a) Seek direct adjustment of any grievance or dispute with the foreman under whom he is employed. * * *;

"(b) If the question is not then settled, the employee may submit his grievance in writing, on forms supplied by Union, to a committee selected as hereinafter provided for the particular plant or region in which such employee is employed. Such committee shall investigate said complaint and if in its opinion the grievance has merit it shall have the right to meet with the local company superintendent or his representative, who shall receive the committee for this purpose. * * *.

"3. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty (60) days from the date on which the complaint or grievance arose, or

from the date on which the employee or employees concerned first learned of the cause of complaint.

"4. The committee above mentioned shall be selected from among and by employees of the Employer who are members of the Union.

"5. When any employee is discharged for cause or is given a disciplinary suspension, he shall prior thereto or promptly thereafter be given a written statement dated and signed by his foreman or other Employer representative setting forth the reason for such discharge or suspension. The Workmen's Committee will be furnished with a copy of any such statement furnished to the employee. * * *.

"6. In the event the decision of the superintendent or his representative shall not be satisfactory to the committee, it is agreed that the President of the Oil, Chemical and Atomic Workers International Union, or someone designated by him, shall, not later than forty-five (45) days after such decision, have the right to confer with the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, for the purpose of discussing grievances or disputes and of obtaining decisions thereon. * * *.

"7. If such decision is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after formation of such Board. * * *. These local Arbitration Boards shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement, or supplements thereto, and local wage and classification disputes submitted on the initiative of the President or any District Director of the Oil, Chemical and Atomic Workers International Union. * * *.

"8. The above-mentioned local Arbitration Board shall be composed of one person designated by Em-

ployer and one designated by the President or District Director of the Oil, Chemical and Atomic Workers International Union. The two member Board shall meet within sixty (60) days from the date of its formation and endeavor to render a decision on the complaint, which if reached, shall be in writing. Should the two-member Board be unable to agree on such decision or to agree upon an impartial third Arbitrator, they shall at such meeting jointly petition the Federal Mediation and Conciliation Service to submit a panel of arbitrators from which the third member of the Board shall be selected as promptly as reasonably practical in accordance with the procedure of such Federal Mediation and Conciliation Service.

"In the event the two-member Board fails to meet within the aforesaid sixty (60) day period, or any extension thereof arrived at by mutual agreement, either member, or jointly, may petition the Federal Mediation and Conciliation Service for the purpose hereinabove set forth.

"9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. * * *."

REASONS FOR DENYING THE WRIT.

1. The portions of the decision which the Union seeks to have reviewed are not final; they are merely interlocutory rulings holding two counts of a complaint good as against motions to dismiss them. What final judgments will be entered on these counts cannot now be known.

The procedural posture of the counts involved is quite different from the procedural posture of the count in respondent's companion petition, No. 434 this term, in which respondent seeks certiorari from the final judgment dismissing the count (of the same complaint) which prayed an injunction against strike activity, in violation of the contract, over asserted employee grievances which the contract required be submitted to binding arbitration. (Cf.

Chauffeurs, Teamsters & Helpers Union v. Yellow Transit Lines, No. 13 this term, presenting another facet of the basic problem presented by respondent here in No. 434. In No. 434 we suggest the petition therein should be considered with No. 13, for both No. 434 and *Yellow Transit* although arising from no-strike clauses, present differences which the Court well may wish, we believe should, consider at the same time.)

2. The petition's intricate list of supposed "Questions Presented" demonstrates that neither Count I nor II has yet been crystallized to any specific question of general importance that might warrant certiorari. The involved list of questions is merely an example of possibilities that an active legal imagination, in the early stages of litigation, can conceive may ultimately arise.

3. On the asserted issue as to whether an employer must seek his remedy for breach of a no-strike covenant through arbitration rather than through the courts there is no conflict between the Courts of Appeal. Resolution of that issue depends upon construction of the particular contract involved rather than upon a question of general law. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582, made it clear that "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit". There neither is, nor can be, any dispute between Courts of Appeal as to that proposition. However, Court A may find a particular contract does not contain an agreement to submit such a dispute to arbitration while Court B may find a different contract does contain such an agreement. So long as the Courts of Appeal seek to apply the test of *Warrior*, this Court obviously cannot review each decision to see whether a particular contract has been construed correctly. And certainly not this case, for petitioners' failure to point to

a single provision of the contract requiring arbitration of employer claims of breach of the no-strike clause demonstrates that the Court of Appeals (and the District Court) correctly decided that violation of the no-strike covenant is not "a subject which [respondent] has contracted to submit to arbitration." (Pet. p. 29.) The elaborate contract provisions as to the manner of processing, and, if necessary, of arbitrating, employee grievances which we have quoted herein, emphasize the absence of any provision limiting the employer's right to sue or providing for or permitting, it to initiate an arbitration against employees or unions. Not only is there no provision for the initiation of an arbitration by the employer but Section XXVI, 7, quoted, *supra*, permits Arbitration Boards to "consider only individual or local employee or local committee grievances" etc. The Court of Appeals understood and properly applied, the test of *Warrior*. (Pet. pp. 29-30.)

It is prayed that the writ be denied.

Respectfully submitted,

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October 3, 1961.

OCT 12 1961

JAMES R. BROWNING, CLERK

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**SUPPLEMENT TO PETITION FOR WRIT OF
CERTIORARI IN ORDER TO CITE
ADDITIONAL AUTHORITY.**

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To: *The Honorable Tom Clark,*
Associate Justice of the
Supreme Court of the United States:

Petitioners respectfully pray that the Court accept this Supplement to our Petition for Writ of Certiorari filed on or about September 22, 1961, in order to cite recent and significant additional authority. In support thereof, Petitioners say as follows:

1. Subsequent to September 22, 1961, your petitioners received notice that the Court of Appeals for the Second Circuit, en banc, in *Drake Bakeries v. Local 50, American Bakery & Confectionery Workers' International Union*,

AFL-CIO, F. 2d (1961), 48 LRRM 2987 reversed its former decision in the same case reported in 287 F. 2d 155 (1961). The effect of the Second Circuit's en banc decision was to affirm the ruling of the United States District Court for the Southern District of New York reported in F. Supp. (1960), 46 LRRM 2143.

2. The recent decision of the Second Circuit in *Drake Bakeries* has significant implications as to whether this court will grant certiorari on the basic question set forth on page 2 of our Petition for a Writ of Certiorari: whether a Federal District Court is required to dismiss or, in the alternative, to stay a suit for damages for breach of the no-strike clause of a collective bargaining agreement brought by an employer against a union under Section 301 of the Labor Management Relations Act (1947) as amended (61 Stat. 136; 29 U. S. C. 141) pending arbitration of the dispute pursuant to the bargaining agreement.

The *Drake* decision heightens the already existing conflict between the Second Circuit and the Seventh Circuit of this very significant question. The Federal District Court in *Drake* stayed a suit for damages brought by an employer against a union for alleged breach of a no-strike provision in their collective bargaining agreement. The Federal District Court ordered the parties to first submit their dispute to arbitration as provided by the agreement. The effect of the en banc decision of the Second Circuit is to affirm the decision of the Federal District Court. In a per curiam opinion, the Second Circuit sitting en banc relied upon the decisions of this Court in *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960); *United Steelworkers v. Enterprise Wheel & Car Company*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960); *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U. S. 574, L. Ed. 2d 1409, 80 S. Ct. 1347 (1960).

The Court of Appeals for the Seventh Circuit in its opinion in the subject litigation, cited the first decision of the Second Circuit in *Drake Bakeries* in support of its conclusion that the alleged breach by the defendant unions of the no-strike clause of the subject collective bargaining agreement is not susceptible to arbitration. (See decision of the Court of Appeals for the Seventh Circuit, Appendix B page 30 Petition for Writ of Certiorari.) The Seventh Circuit's opinion was published prior to the reversal by the Second Circuit in its en banc proceeding cited above.

3. We refer the court to an earlier decision of the Second Circuit in *Signal Stat. v. U. E.*, 235 F. 2d 298 (1956), cert. den'd, 354 U. S. 911 (1957) and decisions from other circuits demonstrating the sharp conflict existing among the courts of appeal on this important question prior to the *Drake* decision. (See Petition for Writ of Certiorari, page 10.)

Respectfully submitted,

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JOHN F. DAVIS, CLERK

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COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE

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**BRIEF FOR THE AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE**

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO is primarily a federation of national and international labor unions, which have approximately thirteen million members. As the principal spokesman for organized working people in this country, the Federation is greatly concerned that in the development of our national labor policy a proper balance of power be struck between labor and management, and the stability of industrial relations not jeopardized by needless bitterness and dissension.

The present case involves an almost unprecedented situation: an attempt by an employer to hold his individual employees liable at law for money damages for their participation in a peaceful work stoppage, allegedly in violation of a no-strike clause in a collective bargaining agreement. The Federation feels firmly that the upholding of such a cause of action would be a calamity for American labor relations.¹

Individual and union petitioners in No. 430 will naturally concentrate in their brief on the peculiar facts of this particular case and on the applicability of specific legal precedents. We propose to emphasize general considerations of labor policy and current theories of the legal nature of the collective bargaining agreement. For the AFL-CIO and the employees represented by its affiliated unions are vitally interested in having the Court view this case in the broadest perspective and with a full awareness of the deep implications its decision will have for the institution of collective bargaining.

¹ The Federation is equally concerned with seeing the union position sustained on the basic issue posed by the consolidated case, *Sinclair Refining Co. v. Atkinson*, No. 434, October Term, 1961. We are in full accord with the Court of Appeals below, which held that the Norris-LaGuardia Act prevents a federal court from enjoining peaceful work stoppages regardless of whether such conduct involves a breach of contract (R. 76-78). Our views on this general question have already been set before the Court in our *amicus* brief in *Teamsters Local 795 v. Yellow Transit Freight Lines*, No. 13, October Term, 1961. We will only add that the arguments against allowing an injunction in that case apply here *a fortiori*. In *Yellow Transit* an employer sought an injunction against a pending strike; in the instant case the employer sought an injunction operating *in futuro* (R. 77; see R. 18). Furthermore, insofar as the employer here attempted to enjoin not only the union but also individuals, under the court's diversity jurisdiction (R. 14, 18, 77), there would not even be available the argument that sec. 301 of Taft-Hartley in authorizing employer suits against unions on collective contracts effected an implied *pro tanto* repeal of Norris-LaGuardia.

ARGUMENT

Precedent provides few guidelines for the resolution of the legal issue we are considering in this case. We turn first to basic labor policy to support our proposition that individual employees should not be held liable at law for money damages for engaging in a peaceful work stoppage in alleged violation of a no-strike clause in a collective bargaining agreement. Introducing such individual liability is wholly unnecessary for the preservation of responsible collective bargaining. On the contrary, it is diametrically opposed to the best of both theory and practice in modern industrial relations, which are grounded on the notion of collective rights and collective obligations. Moreover, the imposition of legal liability on individual employees for peaceful concerted activities such as strikes or picketing conflicts with the policies embodied in our national labor laws, and should be deemed beyond the power of either the federal or state courts. Finally, the conclusion that individual employees should not be subject to damages for breaching a no-strike clause in a union contract is entirely consistent with, if not demanded by, the various legal theories which have been advanced to explain the nature and effect of a collective agreement.

I. Allowing Damage Actions Against Individual Employees For Peaceful Work Stoppages Is Unnecessary To Maintain Responsible Collective Bargaining And Is Contrary To Both Sound Principles And Sound Practices In Industrial Relations.

A. THE NEEDS OF RESPONSIBLE COLLECTIVE BARGAINING

The institution of collective bargaining has never functioned more effectively than in these early years of the 1960s.² Labor historian Foster Rhea Dulles comments that

² We refer to situations in which the employer has accepted the union's role, and meaningful relationships have been established. The general pattern of union organization and recognition still leaves room for vast improvement.

"the general observance of union contracts," among other developments, attests to a "growing sense of responsibility on the part of both management and labor."³ And a distinguished study group headed by economist Clark Kerr, in reporting on the achievements of collective bargaining as of December 1961, noted specifically: "Wildcat strikes and other disorderly means of protest have been curtailed and an effective work discipline generally established."⁴

The experts' impressions are confirmed by the statistics. Man-days lost through strikes during 1961 equalled 1957's postwar low of 16.5 million, according to the Bureau of Labor Statistics.⁵ Meanwhile, a survey by the Bureau of National Affairs of 400 representative collective bargaining agreements in effect as of mid-1960 revealed that 94 per cent of them contained some form of no-strike clause.⁶ This amounted to an increase from 85 per cent in 1950.⁷

Apart from the inherent effect of a union's pledged word as a deterrent to work stoppages, no-strike clauses of course provide a basis for employer damage actions, under section 301 of the Taft-Hartley Act, against a union which breaches its agreement. 61 Stat. 156, 29 U.S.C. §185; *United Electrical Workers v. Oliver Corp.*, 205 F. 2d 376 (8th Cir. 1953); *Teamsters Local 25 v. W. L. Mead, Inc.*, 230 F. 2d 576 (1st Cir. 1956), *cert. den.* 352 U.S. 802; *Drake Bakeries v. American Bakery Workers Local 50*, 287 F. 2d 155 (2d Cir. 1961), *cert. granted* January 22, 1962, No. 598, October Term, 1961.

Insofar as a union itself violates a no-strike clause, there-

³ Dulles, *Labor in America* 413 (1960).

⁴ *The Public Interest in National Labor Policy* 32 (Committee for Economic Development, 1961).

⁵ 49 BNA Lab. Rel. Rep. 243 (Jan. 8, 1962); 85 Monthly Lab. Rev. 122 (Jan. 1962).

⁶ 47 LRRM 33-34 (1961).

⁷ Beatty, *Labor-Management Arbitration Manual* 91 (1960).

fore, an employer can, if he wishes, secure adequate compensation through a damage action against the union. As will be discussed later,⁸ however, healthy labor-management relations are not significantly promoted by damage actions of any kind. And employer damage actions against individual employees have made no contribution at all. Indeed, one writer has reported that prior to 1958 a nineteenth century Nebraska decision was the "only case which has been found which allowed such recovery of damages against individual employees for a peaceful strike."⁹

The growth of sound collective bargaining relationships has thus clearly owed nothing in the past to the novel remedy under examination here. And the present times demand no startling innovations. In the absence of any demonstrated need for radical changes or of any compelling legal precedents, judicial inventiveness should proceed cautiously in this area, heeding closely the lessons to be drawn from sound theory and sound practice in the field of industrial relations.

B. THEORY AND PRACTICE IN INDUSTRIAL RELATIONS

The dean of American labor scholars, John R. Commons, epitomized the modern approach to labor relations when he declared: "This is an age of collective action."¹⁰ Any attempt to apply traditional doctrines of freedom of contract and individual liability in the field of industrial relations would fail to conform, as Professor Neil Chamberlain has warned, to "the institutional premises of the American

⁸ See part I-B *infra*, pp. 6-8.

⁹ Comment, "Liability of Employees Under State Law for Damages Caused by Wildcat Strike," 59 Colum. L. Rev. 177, 181 (1959), citing *Mapstrick v. Ramge*, 9 Neb. 390, 2 N. W. 739 (1879) ("civil conspiracy"), and sharply criticizing the allowance of a damage suit against individual strikers in *Louisville & N. R. Co. v. Brown*, 252 F. 2d 149 (5th Cir. 1958), *cert. den.* 356 U. S. 949 (applying the Railway Labor Act, not a no-strike clause).

¹⁰ Commons, *The Economics of Collective Action* 23 (1950).

scene."¹¹ Former Professor Archibald Cox pointed up a unique quality of the labor agreement when he remarked: "A collective bargaining contract is made to be broken. The number of people involved, both as employees and as supervisors, makes large and small violations inevitable."¹² The late Dean Harry Shulman elaborated on this latter theme as follows:

"It must be continuously and sharply remembered that the collective agreement in itself is not the object of the parties' relations, and that its enforcement or administration is not an end in itself—that the quality and success of the administration of the agreement is not measured by the degree of compliance with it, but rather by the degree to which it aids the achievement of just and harmonious operation of the entire enterprise so as to secure what we may call optimum production."¹³

Obviously, the above considerations all indicate that as a matter of policy the relationships created by a collective agreement should be viewed differently from those created by the ordinary contract. On the specific issue of assessing damages in cases involving infractions of the employment relationship, Morris Ernst concluded that money awards "breed nothing but ill will, and have neither the intention nor the result of effecting industrial peace."¹⁴ A committee

¹¹ Chamberlain, "Collective Bargaining and the Concept of Contract," 48 Colum. L. Rev. 829, 837 (1948). Individual liability for the performance of a corporation's contractual obligations is of course not the rule for the organization's officers, directors, or stockholders. 3 Fletcher, *Corporations* § 1118, pp. 685-686 (1947).

¹² Cox, "The Legal Nature of Collective Bargaining Agreements," 57 Mich. L. Rev. 1, 18 (1958).

¹³ 3 *Conference on Training of Law Students in Labor Relations, Transcript of Proceedings* 663 (1947), quoted in Chamberlain, *supra* note 11, 48 Colum. L. Rev. at 840.

¹⁴ Ernst, "The Development of Industrial Jurisprudence," 21 Colum. L. Rev. 155 (1921).

of the American Bar Association echoed that sentiment, stating: "We feel that damage suits are generally not good medicine for labor relations."¹⁵

Legal commentators have relied on numerous policy grounds in attacking employer damage actions against individual employees for breaching no-strike clauses. One writer has contended that such suits carry the flavor of a discredited period of industrial relations in the past; that they would "inject greater bitterness into labor relations"; that individual employees "might lose their entire life savings at one blow"; and that in the long run the employer would suffer since damage actions "would make future efforts to achieve closer understanding with its employees tremendously more difficult."¹⁶ Another critic adds that "the potentially drastic effect on individuals and the probable intensification of employer-employee antagonism which would ensue from such an action would seem to outweigh any possible advantage of its availability to the employer."¹⁷

We certainly are not trying to deny employers an adequate remedy against employees who engage in improper work stoppages. But the most effective method of enforcing the anti-strike pledge lies right within the work community itself. One of the nation's leading labor arbitrators, Marion

¹⁵ See Fulda, "The No-Strike Clause," 21 Geo. Wash. L. Rev. 127, 144 (1952) (Report of the Committee on Improvement of Administration of Union-Employer Contracts, ABA Section of Labor Relations Law).

¹⁶ Givens, "Responsibility of Individual Employees for Breaches of No-Strike Clauses," 14 Ind. & Lab. Rel. Rev. 595, 596 (1961). For general discussions of the bygone era of acrimonious, suit-laden labor relations, see Frankfurter and Greene, *The Labor Injunction* (1930); Witte, *The Government in Labor Disputes* (1932); 1 Teller, *Labor Disputes and Collective Bargaining* §§ 14-30 (1940). Cf. S. Rep. No. 163, 72d Cong., 1st Sess., p. 18 (background of the Norris-LaGuardia Act).

¹⁷ Comment, 59 Colum. L. Rev. 177, 189 (1959).

Beatty, puts it this way: "Discipline or discharges followed by the grievance procedure and arbitration are the most common form of reprisal for violation of a no-strike clause and more practical for both sides than is court action."¹⁸ While we cannot subscribe to Dean Shulman's thesis that the courts should stay out of labor-management contractual disputes altogether, we do think that much support for keeping judicial action to a minimum can be found in his observation that "the courts cannot, by occasional sporadic decision, restore the parties' continuing relationship; and their intervention in such cases may seriously affect the going systems of self-government."¹⁹ That would seem most true of all where the courts are asked to fasten financial liability on individual employees.

II. Allowing Damage Actions Against Individual Employees For Peaceful Work Stoppages Is Contrary To The Policy Of Our National Labor Laws.

A. FEDERAL LABOR POLICY IN GENERAL

In the instant case the employer purports to ground its action for damages against the individual employees on state substantive law (R. 12, 56-57, 66). Yet the impact of federal law cannot be avoided. Ultimately, any rights the employer may have against its individual employees must be based upon an interpretation and application of the collective bargaining agreement with the union, and the no-strike clause contained therein. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456, establishes that suits on collective contracts under section 301 of Taft-Hartley are to be decided under "federal law which the courts must fashion from the policy of our national labor laws."

¹⁸ Beatty, *Labor-Management Arbitration Manual* 92 (1960).

¹⁹ Shulman, "Reason, Contract, and Law in Labor Relations," 68 Harv. L. Rev. 999, 1024 (1955).

The vast majority of courts which have considered the problem have gone one step further. Federal law alone, they hold, now governs the collective agreements of unions and employers in interstate commerce, even though state courts retain concurrent jurisdiction to apply the federal law. See, e.g., *McCarroll v. Los Angeles District Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. den.* 355 U.S. 932; *Ingraham Co. v. IUE Local 260*, 171 F. Supp. 103 (D. Conn. 1959); *Minkoff v. Scranton Frocks, Inc.*, 172 F. Supp. 870 (S.D.N.Y. 1959); *Swift & Co. v. Packinghouse Workers*, 177 F. Supp. 511 (D. Colo. 1959); cf. *Charles Dowd Box Co. v. Courtney*, No. 33, October Term, 1961, decided February 19, 1962. This result is necessary. As Professor Harry Wellington remarks, "independent bodies of law should not compete to regulate the primary rights of individuals and organizations."²⁰

So however the employer denominates its action, its rights in the end hinge on the "policy of our national labor laws." No express language can be cited in either the federal statutes or the decisions of this Court which is definitely dispositive of the issue here. Nevertheless, we feel it entirely fair to say that the whole trend of recent federal statutory and decisional law in the field of labor relations has been away from the sort of individual liability reminiscent of the days of the *Danbury Hatters*.²¹

Section 6 of the Norris-LaGuardia Act, 47 Stat. 71, 29 U.S.C. §106, eliminated some of the most flagrant abuses by

²⁰ Wellington, "Labor and the Federal System," 26 Univ. Chi. L. Rev. 542, 561 (1959). See also Gregory, "The Law of the Collective Agreement," 57 Mich. L. Rev. 635, 653 (1959) ("there will probably be a body of what we might call federal 'common law' adjunct to section 301, which will supersede in the state courts all local state common or statute law").

²¹ See *Loewe v. Lawlor*, 208 U. S. 274; *Lawlor v. Loewe*, 235 U. S. 522.

ensuring that union members would not be liable for the unlawful activity of other union people except upon clear proof of personal participation or authorization. And section 301 (b) of Taft-Hartley provided that money judgments against a union "shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets." Of course this does not explicitly negate the right to hold individual employees liable for their own peaceful concerted activities. But we agree with the commentators who have suggested that the quoted language can be interpreted "as an indication that the over-all regulatory scheme of the act reflects a policy unfavorable to individual liability."²²

In *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 470, this Court cited section 301 (b) as evidencing "a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it." A union's breach of a collective agreement therefore could not be used by the employer as a defense against its duty to contribute to an employee welfare fund. In *Wilson & Co. v. Packinghouse Workers*, 181 F. Supp. 809 (N.D. Iowa 1960), *Benedict Coal* was relied upon in a suit akin to the present one to support the conclusion that union officers could not be held individually liable for money damages under state tort law for inducing their union to breach its no-strike agreement. We submit that the same philosophy of organizational as distinguished from individual liability favors the conclusion that employees should not be held liable for money damages under either state tort or contract law for inducing or participating in a peaceful work stoppage despite the existence

²² Comment, 59 Colum. L. Rev. 177, 187, n. 61 (1959); see also Givens, *supra* note 16, 14 Ind. & Lab. Rev. at 597.

of a no-strike provision in their union's collective agreement.²³

The employer here will undoubtedly argue that such provisions as section 6 of Norris-LaGuardia and section 301 (b) of Taft-Hartley, and such decisions as *Benedict Coal*, merely indicate that individuals should not be held liable for union action, or for other action in which they do not participate. Such authorities, it will be insisted, have nothing to do with the question of individual liability for personal actions. We disagree. It is quite true that these authorities do not logically compel the result we seek in this case. But they do lend firm support to our thesis that in modern times the Congress and this Court have consistently repudiated attempts to impose financial liability on individuals for peaceful concerted labor activities. Whether the rule be framed in terms of absolving individuals of liability for union action, or in terms of imposing an obligation enforceable through damages only on the union and not on individuals, the result is the same and reflects the same underlying philosophy. The ultimate question is whether a no-strike clause in a collective contract places a duty on individual employees enforceable at law through money damages. We are contending at this point that as a matter of federal labor policy the

²³ The employer here has relied upon a number of alternative theories of liability, sounding in both tort and contract, including allegations of both personal breaches of contract by employees and inducements of breaches on the part of their fellow employees (R. 72-76). We think this multifariousness of rationale adds nothing essential to the cause of action. As has been observed, "if the employees could not be sued as individuals for breach of a no-strike agreement, it would seem illogical to hold them liable for an interference with their employer's business, which interference is unlawful only because of such an agreement. The basic question which would seem to determine either action is whether a no-strike clause imposes upon the individual employee a duty not to engage in or 'foment' a strike." Comment, 59 Colum. L. Rev. 177, 185, n. 49 (1959).

answer should be No. We will later show that as a matter of sound contract theory the answer should likewise be No.²⁴

The theory of individual liability also conflicts with fundamental federal policy embodied in section 9 of the National Labor Relations Act, 61 Stat. 143, 29 U.S.C. §159. Under section 9 a majority union is the "exclusive representative" of all the employees in the bargaining unit. To make this status fully meaningful, the union must be able to act as sole agent on behalf of the employees not only in negotiating terms and conditions of employment, but also in litigating with the employer the rights and obligations springing from the collective agreement. This at least is true regarding the collective rights of the work force, as distinguished from such a "uniquely personal right" of an individual as "accrued wages." Compare *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 460, 461, with *Textile Workers v. Lincoln Mills*, 353 U.S. 448. Nothing could be less a "uniquely personal right" than the right of employees to engage in concerted work stoppages for mutual aid and protection. Yet to accord the employer the power to maintain a damage action against individual employees for participating in a peaceful strike would necessarily seem to imply according those employees the power to compromise and settle the suit on such terms as they, individually, could arrange with the employer. In effect, a judicial proceeding would become the instrument whereby the employer could negotiate with individual employees concerning their right to engage in one of the most crucial of concerted activities and one generally covered in the collective agreement. Few things could more effectively undercut the policy upheld by this Court when it declared in *J. I. Case Co. v. NLRB*, 321 U.S. 332, 338, that the "very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees

²⁴ See part III, *infra*, p. 16.

with terms which reflect the strength and bargaining power and serve the welfare of the group.'²⁵

B. THE NLRB'S PRIMARY JURISDICTION AND FEDERAL PRE-EMPTION

In *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245, this Court laid down the following fundamental principle: "When an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." See also *Garner v. Teamsters Local 776*, 346 U.S. 485; *Weber v. Anheuser-Busch*, 348 U.S. 468.

The status of employees striking in alleged violation of a no-strike clause has traditionally been subject to Labor Board regulation. As this Court has held, even the existence

²⁵ When Congress wished to allow individual employees or groups to deal directly with their employer regarding rights under a collective agreement, it expressly so provided. Provisos to sec. 9 (a) permit employees "to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative," but the adjustment must not conflict with a union contract. This limited authorization for the direct handling of employee "grievances" plainly does not cover negotiations leading to a compromise settlement of an employer's suit against individual employees for engaging in peaceful concerted activities. See also S. Rep. No. 105, 80th Cong., 1st Sess., p. 24.

In addition to the statutes and decisions discussed in the text, sec. 502 of the Taft-Hartley Act, 61 Stat. 162, 29 U.S.C. §143, has been cited as further authority for the view that it would be contrary to national labor policy to hold individual employees liable for money damages. See Givens, *supra* note 16, 14 Ind. & Lab. Rel. Rev. at 597. Sec. 502 provides *inter alia* that nothing in Taft-Hartley shall make "the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent." Cf. Comment, 59 Colum. L. Rev. 177, 182, n. 34 (1959).

of an anti-strike pledge does not necessarily strip the protections of section 7 from employees engaging in peaceful work stoppages. See *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 283 (no-strike clause does not waive employees' "right to strike against unfair labor practices"). In the light of *Garmon*, this fact alone should foreclose the sort of action under state tort or contract law which is proposed here. It would be anomalous indeed if an employee were subject to a damage action for engaging in activities which the Labor Board might hold were protected under federal law. But even more basically, peaceful strikes are the very kind of concerted activities which Congress has assigned to the exclusive primary jurisdiction of the NLRB. Therefore, in the absence of such a clear statutory exception as section 301's authorization for employer suits against *unions*, the legality of a peaceful work stoppage should not first be determined in a private suit against individual employees in either federal or state court.

Against our position the contention will be made that an employer may lawfully discharge an employee who violates a no-strike clause under certain circumstances,²⁶ and that accordingly it cannot be said such an employee remains protected by section 7. This may be too simplistic an analysis. At least two legal commentators have agreed that the extent of section 7 protections may turn not only on the nature of the employee's conduct, but also on the nature of the employer's retaliation. As one of these writers says:

"Thus, discharge could be viewed as an appropriate and reasonable remedy for an employee's striking in violation of a collective bargaining agreement (and thus not an *unwarranted* interference under §8(a)(1) of the LMRA with rights guaranteed by §7 of the act), while imposition of a heavy judgment for damages could be

²⁶ See *NLRB v. Sands Mfg. Co.*, 306 U.S. 332; *Scullin Steel Co.*, 65 NLRB 1294 (1946), *modified and enforced* 161 F. 2d 143 (8th Cir. 1947); *Joseph Dyson & Sons, Inc.*, 72 NLRB 445 (1947).

considered an inappropriate remedy because the intimidating effect might interfere with the purposes for which federal law protects concerted activity."²⁷ (Emphasis in the original.)

The only proper forum in which to resolve that type of question is the National Labor Relations Board.

It might well be, however, that the issue of federal preemption should not pivot solely on the narrow question of whether a particular activity is either protected or prohibited by the National Labor Relations Act. The majority opinion in *Garmon*, see 359 U.S. at 245, may foreshadow an acceptance by this Court of a broader preemption doctrine along the lines advocated by such scholars as former Professor Cox. For him the NLRA is a "comprehensive code of regulation" in the field of labor-management relations, effecting a "total pre-emption of state laws dealing with unionization and collective bargaining, including resort to peaceful strikes and picketing."²⁸ In this view, a person

²⁷ Comment, 59 Colum. L. Rev. 177, 187, n. 62 (1959); see also Givens, *supra* note 16, 14 Ind. & Lab. Rel. at 598. For Labor Board treatment of employers' state court suits against unions as unfair labor practices, compare *Clyde Taylor Co.*, 127 NLRB 103 (1960), with *W. T. Carter*, 90 NLRB 2020 (1950). Cf. *Half*, *d.b.a. Half Mfg. Co.*, 16 NLRB 667 (1939). The mere "tendency" of state law to impinge on federal rights is sometimes sufficient to invalidate it. See *Smith v. California*, 361 U.S. 147, 155.

²⁸ Cox, "The Labor Decisions of the Supreme Court at the October Term 1957," *Proceedings of the ABA Section of Labor Relations Law* 12, 20-21 (1958); see also "Report of the Committee on State Labor Legislation," *Proceedings of the ABA Section of Labor Relations Law* 133, 136 (1959). This Court has stated that preemption is not affected by any distinction between state laws regulating labor-management relations and state laws of general applicability. *Weber v. Anheuser-Busch*, 348 U.S. 468, 479-480. Cf. *Teamsters Local 24 v. Oliver*, 358 U.S. 283. But even a "total preemption" doctrine would leave room for state law regulating "violence and imminent threats to the public order," or matters of a "merely peripheral concern" to the federal scheme. See *Garmon*, 359 U.S. at 243, 247; see also *Auto Workers v. Russell*, 356 U.S. 634; *Machinists v. Gonzales*, 356 U.S. 617.

would have a right against nonviolent conduct in the labor-management field under federal law, or, at least so far as state tort law is concerned,²⁹ he would have no right at all. It goes without saying that federal law grants an employer no remedy of money damages against individual employees who engage in a peaceful work stoppage.

But it is not necessary to reach these broader questions in order to sustain the union's position. The statutes and the decisions we have discussed, and the traditional preemption doctrine exemplified by *Garmon*, are enough. They clearly indicate that "damages against individual employees for peaceful activities in a strike, whether or not in violation of a collective bargaining agreement, or of state or federal law, violate the basic presuppositions of our national labor policies."³⁰

III. Legal Theories Regarding The Nature Of A Collective Agreement Support, If They Do Not Demand, The Conclusion That Individual Employees Are Not Liable In Damages Under A No-Strike Clause For Engaging In Peaceful Work Stoppages.

Sound principles and practices in industrial relations, and the policy of our national labor laws, all point to the

²⁹ Barring a revision in the views expressed by this Court in *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, a certain body of residual state contract law in the labor field would appear necessary to enable employees to enforce their individual rights under a collective agreement against their employer. Both Professors Cox and Gregory, however, favor giving the union "control over all claims arising under the collective agreement," and excluding "actions by individual employees" in either federal or state courts. See Cox, *supra* note 12, 57 Mich. L. Rev. at 24; Gregory, *supra* note 20, 57 Mich. L. Rev. at 642-643, 652. Now that *Lincoln Mills* has disposed of the constitutional problems underlying much of *Westinghouse*, these views should appear much more acceptable to this Court. See also sec. 301 of Taft-Hartley ("Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States"). (Emphasis added.) Cf. *American Brake Shoe Co. v. Auto Workers Local 149*, 285 F. 2d 869, 874 (4th Cir. 1961).

³⁰ Givens, *supra* note 16, 14 Ind. & Lab. Rel. Rev. at 598-599.

conclusion that individual employees should not be held liable in damages under a no-strike clause for engaging in peaceful work stoppages. It remains to show that this conclusion is consistent with good contract law, as it applies to a collective bargaining agreement.

At least three main theories, along with variants, have been advanced either singly or in combination to explain the legal nature and effect of the collective contract:

1. The union agreement establishes local customs or usages, which are then incorporated into the individual's contract of employment. This was probably the orthodox view in the earlier days of American law,³¹ but it comports least well with current thinking on the legal status of the union. In order to account for the recognition now granted to both the union and individuals as possessors of enforceable rights under collective agreements, a refinement of the custom and usage theory posits the existence of two contracts. One contract is made up "partly of promises running to the benefit of the union as an organization * * * and partly of provisions relating to wages, hours and job security which the em-

³¹ See Rice, "Collective Labor Agreements in American Law," 44 Harv. L. Rev. 572, 582 (1931). Cf. *J. I. Case Co. v. NLRB*, 321 U.S. 332, 334-335.

Under English law, collective agreements are considered merely "gentlemen's agreements" or moral obligations not enforceable by the courts. See *Young v. Canadian Northern Ry. Co.*, [1931] A.C. (P.C.) 83; Gregory, *Labor and the Law* 446 (1961). Nevertheless, despite a recent wave of strikes, including wildcat strikes, which has swept the country, British employers have gone no further than to recommend that individual employment contracts incorporate a reasonable termination notice binding on both employer and employee. This would mean that "an employee cannot be in breach of his contract by, for example, unofficial strike without risking this security," i.e., his security against summary dismissal. See British National Union of Manufacturers, "Proposed British Charter of Industrial Relations," p. 7 (U.S. Labor Dept. mimeo. release, Dec. 1961). Not even the unsettled labor climate provoked the suggestion of any such extreme measure as holding individual employees liable in money damages.

ployer promises to incorporate in a second * * *—the contract of hire between the employer and the individual employee."³²

2. The collective agreement constitutes the action of the union in its capacity as agent for the employees whom it represents.³³ The agency theory has the advantage of fitting in semantically with a majority union's acknowledged status under section 9 of the NLRA as collective bargaining representative for all employees in a unit. In its pure common law form, however, the theory could not explain the union's ability to act for employees who were not members. And even now the loss of power by dissident employees in a bargaining unit to act for themselves is "unlike any ordinary principal to an agency relation."³⁴

3. A collective agreement is a third party beneficiary contract, with the employer and union the promisors and promisees, and with the employees the beneficiaries.³⁵ Despite certain shortcomings, the third party beneficiary theory is regarded by Professor Charles O. Gregory as a "great advance" over the other two.³⁶ Professor Cox, because of his desire to have the union and not individuals enforce rights under a collective contract, prefers a variation of this theory.

³² Cox, *supra* note 12, 57 Mich. L. Rev. at 20.

³³ See *Barnes & Co. v. Berry*, 169 F. 225 (6th Cir. 1909); 1 Teller, *Labor Disputes and Collective Bargaining* §167 (1940); Gregory, *Labor and the Law* 447 (1961).

³⁴ Cox, *supra* note 12, 57 Mich. L. Rev. at 6. See also *Brooks v. NLRB*, 348 U.S. 96, 103 ("Congress has discarded common-law doctrines of agency").

³⁵ See *J. I. Case Co. v. NLRB*, 321 U.S. 332, 336 ("an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement"); 1 Teller, *Labor Disputes and Collective Bargaining* §168 (1940). Cf. *Lewis v. Benedict Coal Corp.*, 361 U.S. 459.

³⁶ Gregory, *Labor and the Law* 447 (1961).

He would treat the the collective agreement as creating "a trust with a chose in action as the *res*"; the union would hold the "employer's promises in trust for the benefit of the individuals."³⁷

The first two of these contract theories are entirely compatible with the result which policy dictates, *viz.*, that individual employees should not be held liable for damages for participating in peaceful work stoppages. The third party theory, now generally the most favored, compels that result.

The usage theory and the agency theory agree in stressing the existence of a contract between employer and employee, separate and distinct from any which may exist between employer and union. And the decisions have consistently recognized that there is a parallel distinction between the collective rights and obligations running between employer and union, and the individual rights and obligations running between employer and employee. Compare *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, with *Textile Workers v. Lincoln Mills*, 353 U.S. 448; see also *Machinists Local 2040 v. Servel, Inc.*, 268 F. 2d 692 (7th Cir. 1959), *cert. den.* 361 U.S. 884; *MacKay v. Loew's, Inc.*, 182 F. 2d 170, 172 (9th Cir. 1950), *cert. den.* 340 U.S. 828.³⁸ We therefore think it wholly consistent with these contractual theories to regard the no-strike clause as a collective obligation binding only on the union, and not as an individual obligation binding on employees who may engage in a wildcat strike or other peaceful work stoppage. Whether or not the union authorizes the strike should not affect the individual's freedom from personal liability.

³⁷ Cox, *supra* note 12, 57 Mich. L. Rev. at 21, 24. Cf. 2 *Trusts 2d Restatement* §§280-282 (1959). Individual employees would be protected by a cause of action against their union if it failed in its fiduciary obligation of enforcing their rights under the collective contract.

³⁸ Also see Cox, *supra* note 12, 57 Mich. L. Rev. at 20; Note, 44 Va. L. Rev. 1337-1338 (1958).

Emphasizing the effect of the union agreement as establishing a body of working rules, Professor Neil Chamberlain writes: "The union's commitment is to foster continued acceptance; it cannot guarantee performance, since the power of performance lies not within its hands. In this sense, violations of the agreement, when not condoned by the union, constitute no breach of contract."³⁹ And emphasizing the scope of the union's agency in entering into the agreement, another commentator observes: "The collective bargaining agreement may certainly bind the individual employee in his activities within the job community, but it would not seem to confer authority upon the union to agree, expressly or by implication, that the employee will personally pay money damages to his employer if he breaches the obligations which the union lays down in the collective agreement."⁴⁰

³⁹ Chamberlain, *supra* note 11, 48 Colum L. Rev. at 842. Chamberlain adds: "Non-complying employees may be disciplined, as individuals, for their non-conformance with the terms of agreement." *Ibid.*

⁴⁰ Givens, *supra* note 16, 14 Ind. & Lab. Rev. at 598. *Cf.* Note, 106 Univ. Pa. L. Rev. 999, 1003 (1958) (arguing that an employer is limited to the penalties spelled out in the contract for violations of a no-strike clause, and "cannot assess a money penalty against the strikers"). Nothing advocated in this brief would prejudice an employer's right to discipline individuals striking contrary to a no-strike pledge. An employer retains his common law power to suspend or discharge employees except insofar as it is limited by statute or contract. A union can in effect waive certain employee rights under sec. 7 by signing a no-strike agreement, see note 26 *supra* and accompanying text, thus leaving the employer free to exercise his traditional disciplinary prerogatives, if otherwise for "just cause." But this is a far cry from saying that a no-strike clause binds individual employees not to engage in peaceful work stoppages under pain of money damages. See also 1 Teller, *Labor Disputes and Collective Bargaining* §169, p. 505 (1940) ("a collective bargaining agreement of definite duration does not, in the absence of any provision in the agreement to the contrary, change the at-will nature of the employees' employment thereunder").

The usage and agency theories thus support our position. The third party beneficiary theory goes even further. If adopted with one of its most basic common law features, it would completely foreclose any action based on the collective contract against individual employees. For a third party beneficiary assumes no obligations at all under a contract made for his benefit. See *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 467; *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F. 2d 623, 626, n. 9 (3d Cir. 1954), *aff'd*. 348 U.S. 437.⁴¹ An employer's sole recourse at law for the breach of a no-strike clause would be against the union, the only promisor.

So far we have considered the collective bargaining agreement according to technical common law contractual principles. Obviously this is inadequate as a realistic description of its actual function in the world of labor-management relations. Again and again it has been stressed that a collective agreement is essentially like "a code for the government of an industrial enterprise." *Aeronautical Industrial District Lodge 72 v. Campbell*, 337 U.S. 521, 528. In *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202, Mr. Chief Justice Stone commented on behalf of this Court: "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents." For Professor Cox, this "governmental nature of a collective bargaining agreement should have predominant influence in its interpretation."⁴²

⁴¹ Also see 1 *Contracts Restatement* §§133-136 (1932); 1 Teller, *Labor Disputes and Collective Bargaining* §168, p. 504 (1940) ("our law does not recognize any obligation to rest upon a third party beneficiary").

⁴² Cox, *supra* note 12, at 25. See also Commons, *The Economics of Collective Action* 270 (1950) ("so-called collective bargaining is, more accurately, economic legislation by representatives of organized capitalists and organized laborers"); *The Public Interest in National Labor Policy* 32 (Committee for Economic Develop-

Here, surely, is the key to any problem of construction. To the extent individual employees are concerned, a collective contract should be viewed primarily as a code regulating their rights and duties "within the job community."⁴³ For violations of the rules of that community they are properly subject to the type of discipline that lies within the power of the community. Individuals engaging in work stoppages in the face of a no-strike clause may even "lose their status as employees," *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 280, and be discharged.⁴⁴ But a no-strike clause should not be deemed to have the intent or effect of subjecting individual employees to legal remedies outside the job community.

Put most simply, this Court can dispose of the precise issue before it by holding that as a matter of federal law a no-strike clause in a union contract will not be interpreted as subjecting individual employees to the drastic, unprecedented remedy of money damages, at least in the absence of a "compelling expression" of such an intent, or "unequivocal words" requiring that result. See *Mastro Plastics*, *supra*, 350 U.S. at 283; *Lewis v. Benedict Coal Corp.*, 361

ment, 1961) ("[a] major achievement of collective bargaining, perhaps its most important contribution to the American workplace, is the creation of a system of industrial jurisprudence, a system under which employer and employee rights are set forth in contractual form and disputes over the meaning of the contract are settled through a rational grievance process usually ending, in the case of unresolved disputes, with arbitration"); Shulman, *supra* note 19, 68 Harv. L. Rev. at 1024 (emphasizing the parties' "continuing relationship," their "going systems of self-government," and their "autonomous system").

⁴³ Givens, *supra* note 16, 14 Ind. & Lab. Rel. Rev. at 598.

⁴⁴ *Ibid.* On the appropriateness of discipline, including discharge, as a penalty for violators of no-strike clauses, and the impropriety or inappropriateness of damage actions, see also Chamberlain, *supra* note 11, 48 Colum. L. Rev. at 842; Beatty, *Labor-Management Arbitration Manual* 92 (1960).

U.S. 459, 471. An abundance of labor policy and legal theory supports this conclusion. And it is wholly consistent with the latest thinking of this Court.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals in No. 430 should be reversed.

Respectfully submitted,

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February 1962

**PETITION FOR A WRIT
OF CERTIORARI**

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Office Supreme Court, U.S.

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JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 434

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner,

vs.

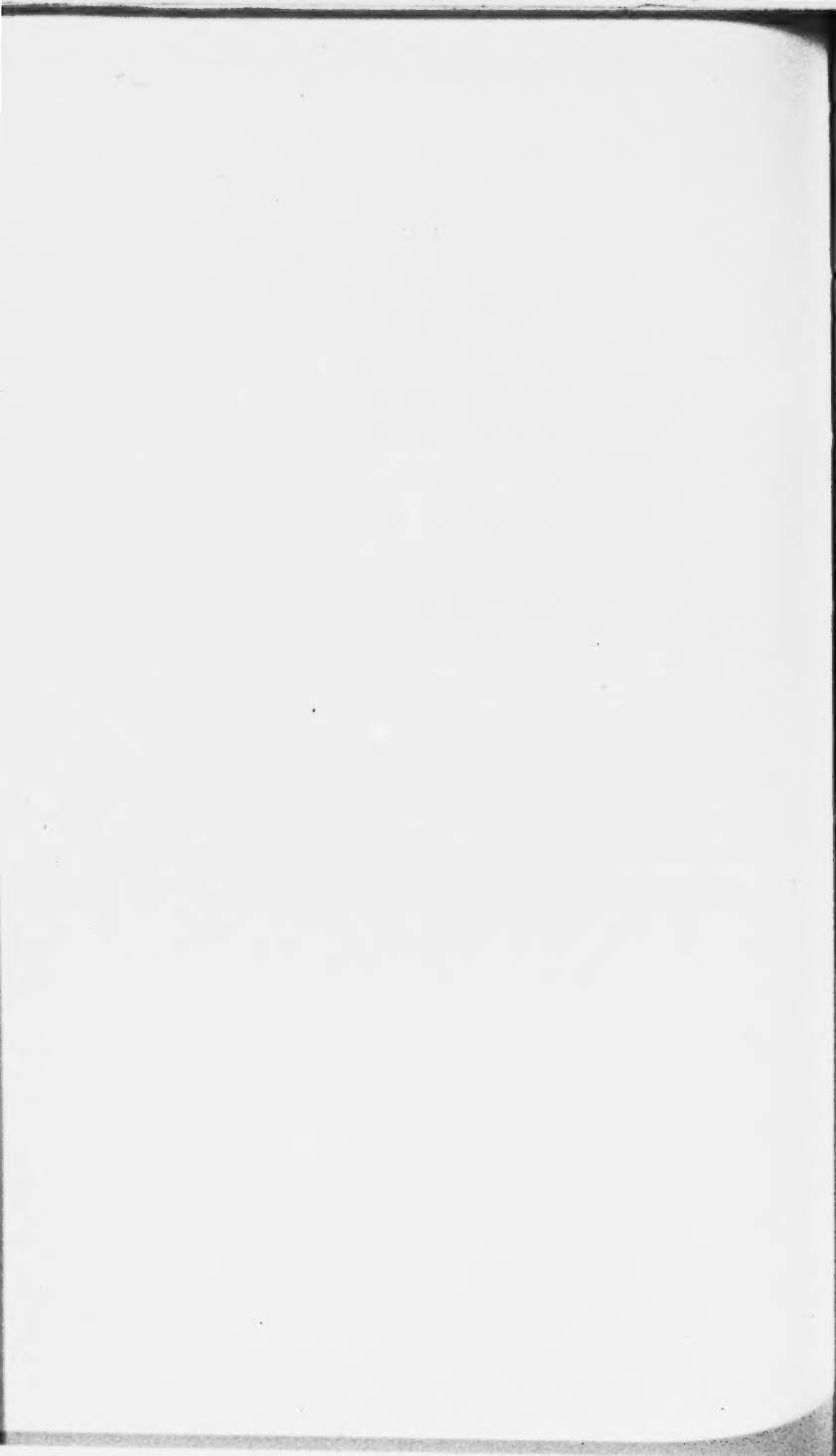
SAMUEL M. ATKINSON, ET AL.,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

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SAMUEL M. ATKINSON, ET AL.,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

Sinclair Refining Company, a corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above case on April 25, 1961.

OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 290 F. 2d 312 and is printed as Appendix A hereto. The opinion of the District Court for the Northern District of Indiana, Hammond Division, is reported at 187 F. Supp. 225, and is printed as Appendix B hereto.

JURISDICTION.

The judgment of the Court of Appeals was entered April 25, 1961. On July 19, 1961, by order of Mr. Justice Clark, the time for filing a petition for certiorari was extended to and including September 22, 1961. Jurisdiction of this Court rests on 28 U. S. C., Sec. 1254.

QUESTION PRESENTED.

Whether the Norris-LaGuardia Act, 29 U. S. C. A. 101 *et seq.* precludes injunctive relief against continuance of a course of conduct by which a union and its members utilize strikes to procure settlements of grievances in violation of a labor contract which forbids strikes over them and provides they must be handled through a grievance procedure culminating in compulsory arbitration.

STATUTES INVOLVED.

Labor-Management Relations Act, 61 Stat. 152, 29 U. S. C. 171:

“That it is the policy of the United States that—
• • •

“(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

“(c) certain controversies which arise between

parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies."

Labor-Management Relations Act, as amended, 61 Stat. 153, 29 U. S. C. 173(d):

"(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

Labor-Management Relations Act, as amended, 61 Stat. 156, 29 U. S. C. 185(a):

"(a) Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

The Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C.:

"101. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this

chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

"104. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined), from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

"(e) Giving publicly to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing

or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title."

"108. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

STATEMENT.

This case arose out of a series of nine strikes in a 19-month period in violation of a no-strike-compulsory arbitration labor contract in force at a refinery operated by petitioner in East Chicago, Indiana. The contract (A. 15) flatly covenants that "there shall be no strikes or work stoppages: (1) For any cause which is or may be the subject of a grievance * * *"; that "a grievance is defined to be any difference regarding wages, hours or working conditions * * *"; that "when a grievance arises, the following procedure [culminating in compulsory arbitration] must be followed." (A. 15, 25, Art. XXVI.)

The complaint was in three counts. The first prayed damages against the International and Local union caused by the latest of the strikes; the second prayed damages against twenty-four individuals, the third alleged that the strike of February 13-14, 1959, over a pay dispute aggregating \$2.19 for three men and which precipitated the suit, was but the culmination of a series of 9 similar illegal strikes or stoppages within a period of 19 months, some of them exceedingly disruptive, and all over work assignments or pay matters that could, and should have

been submitted to the grievance procedure and, if necessary, to arbitration thereunder. It alleged that this evidenced defendants' total disregard of the no-strike covenant and prayed injunctive relief against a continuation of such conduct.

Upon motion to dismiss, the Court of Appeals for the Seventh Circuit held that the law counts were valid, but the injunction count must be dismissed. It held the Norris-LaGuardia Act removed the possibility of use of injunctive powers in any labor dispute absent a contrary "mandate" from Congress. It failed to find such "mandate" in the Labor-Management Relations Act. The Court of Appeals said it was in disagreement with the view of the Court of Appeals for the Tenth Circuit permitting an injunction in *Chauffeurs, Teamsters & Helpers Union No. 795 v. Yellow Transit Freight Lines*, 282 F. 2d 345, and in agreement with the Court of Appeals for the Second Circuit in *A. H. Bull Steamship Co. v. Seafarers' International Union*, 250 F. 2d 326, denying injunctive relief; further, that this Court's decision in *Brotherhood of Railway Trainmen v. Chicago River & Indiana Railroad Company*, 353 U. S. 30 authorizing injunctions against strikes over grievances or "minor disputes" where a "reasonable alternative" in the form of an adjudicative settlement was provided, although applicable in industries operating under the Railway Labor Act, is not controlling with respect to industry generally.

REASONS FOR GRANTING THE WRIT.

The question presented is of profound significance in national labor law. The Court so recognized by granting certiorari in *Chauffeurs, Teamsters and Helpers Union v. Yellow Transit Lines*, No. 13 this Term, referred to in the Court of Appeals opinion herein. After certiorari was granted in *Yellow Transit* the petitioner there moved

to dismiss on the grounds of mootness. Regardless of what decision may be made as to mootness in *Yellow Transit*, it is suggested certiorari should be granted here because:

If *Yellow Transit* be dismissed as moot this case furnishes the opportunity for settling the basic question which the Court, by its grant of certiorari therein, indicated should be settled.

Even if *Yellow Transit* not be dismissed the writ should be granted here and this case taken with *Yellow Transit* for this case presents another facet of the basic problem: In *Yellow Transit* there was a no-strike clause but "both parties denied the existence of any arbitrable grievance" (282 F. 2d at 350). In this case the existence of both the no-strike clause and arbitrable grievances is clear and uncontested. Therefore, this case clearly presents the question as to whether a contract fashioned in full accord with national policy (29 U. S. C. 171), viz., that collectively bargained agreements contain provision for the final adjustment of grievances, can be enforced in the only way that can make the policy truly effective—through specific enforcement of the covenant not to strike.

Textile Workers v. Lincoln Mills, 353 U. S. 448, held that promises to arbitrate contained in labor contracts made under the National Labor Relations Act may be enforced by injunction against an employer—that the ban of the Norris-La Guardia Act was not absolute.

And the ban of Norris-LaGuardia has been lifted further under the Railway Labor Act. *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, 563; *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768 and similar cases hold that the 1934 amendment to the Railway Labor Act cannot be rendered nugatory by the general provisions of the 1932 Norris-LaGuardia Act. This line of authority culminated in *Brotherhood v. Chicago & Indiana R. Co.*, 353

U. S. 30, holding that Norris-LaGuardia must be harmonized with Railway Labor, that among the purposes of the latter was the creation of a tribunal, the Railroad Adjustment Board, which would have authority to settle finally disputes over grievances; that a strike for settlement of a grievance ("minor dispute") in the jurisdiction of the Railroad Adjustment Board could be enjoined.

Moving from the railway labor field to that of general industry in which private contracts for binding arbitration are the counterpart of the Railroad Adjustment Board in the railway field, the Court held in *Textile Workers v. Lincoln Mills*, 353 U. S. 448 that an employer's promise to arbitrate contained in a contract made under the National Labor Relations Act may be enforced by injunction—that the ban of the Norris-LaGuardia Act would not apply to such an injunction. That decision was reinforced by subsequent decisions typified by *United Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, by which the Court gave impressive strength to the finality of arbitration of grievances under general labor contracts. The Court reemphasized the firmness of national policy that arbitration rather than strikes be utilized to settle interim disputes as to the meaning and application of labor contracts.

The Court of Appeals' opinion in the case at bar would confine the doctrine of *Chicago River* solely to the railway field. We suggest that *Chicago River* expresses the broader philosophy that where the parties have devised special processes for binding adjudication of "minor disputes", or "grievances", arising from a contract that such controversies, grievances or disputes, "are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable substitute" (353 U. S. at 41), and that strikes over them may be enjoined.

We suggest also that the case for an injunction to stop

the economic warfare that raged in this refinery over matters that could have been arbitrated is perhaps stronger than was the case in *Chicago River* for there the defendant union's promise not to strike was not an explicit one as here, but was found to be implicit in the representations made to Congress to procure passage of the Railway Labor Act.

It is petitioner's contention (and that of many competent writers in the field) that the identical policy and legal considerations that impelled the *Chicago River* decision under the Railway Labor Act impel a like decision under the National Labor Relations Act: where there is a contract forbidding strikes and requiring or permitting grievances to go to arbitration, the only effective means of enforcing national policy and the promise to arbitrate is to enjoin strikes which are resorted to in violation of that promise.

The history of Norris-LaGuardia will be read in vain for any indication that Congress by that Act intended to protect any "right" of unions to strike in violation of a contract to arbitrate. There was no such "right" in 1932. Certainly there is none now. The prime purpose of Section 301 of the Labor-Management Relations Act (29 U. S. C. 185) was to secure enforcement of promises not to strike and further to enhance arbitration. Yet to deny an injunction here is to ascribe to Congress an intention in 1932 (and 1947), a fantastic intention of protecting against injunction a "right" to violate a contract made in conformance with national policy. The policy favoring arbitration is not new. It was clearly recognized in Section 8 of Norris-LaGuardia (29 U. S. C. 108, p. 5, *infra*). Cf. *Brotherhood of Railway Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50.

It is suggested that in the cases cited in this petition (and others) this Court has stressed that whatever the

rights of the parties may be to resort to economic warfare over bargainable matters (*Cf. Order of Railroad Telegraphers v. Chicago and Northwestern Railway Co.*, 362 U. S. 330, misconstrued in the case at bar), it is national policy that once a contract has been agreed to disputes over its interpretation or application be settled by adjudicative means—Adjustment Board or private arbitration as the case may be. That policy, to be real rather than illusory, must have two legs to stand on rather than one—not only must reluctant employers be forced to arbitrate, but war-bent unions must be made to desist.

The importance of the question presented is shown not only by the grant of certiorari in *Yellow Transit* but by the extent of informed professional literature on it and the rather general agreement that *Norris-La Guardia*, properly construed, does not stand in the way of this limited type of injunctive relief. See *e.g.*, Cox, "*Current Problems in the Law of Grievance Arbitration*," 30 Rocky Mt. L. R. 247; Gregory, "*The Law of the Collective Agreement*," 57 Mich. L. R. 635, 645; Hays, "*The Supreme Court and Labor Law, October Term, 1959*," 60 Col. L. R. 901, 918; Stewart, "*No-Strike Clauses in the Federal Courts*," 59 Mich. L. R. 673, to mention but a few.

Courts of Appeal are in conflict on the question of vast national importance here presented. The Courts for the 2nd and 7th Circuits, as pointed out in the opinion at bar, are in direct conflict with that for the 10th. District Courts in the 9th (*American Smelting and Refining Company v. Tacoma Smeltermen's Union*, 175 F. Supp. 750) and 3rd (*Johnson & Johnson v. Textile Workers Union*, 184 F. Supp. 359) Circuits have lined up with the Court of Appeals for the 10th. Clarification by this Court is required.

It is respectfully prayed that the writ issue and that if No. 13 this Term be not dismissed this case be heard with it.

Respectfully submitted,

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September 20, 1961.

APPENDIX A.

**OPINION OF THE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

Before SCHNACKENBERG, CASTLE and MAJOR, *Circuit Judges*.
CASTLE, *Circuit Judge*.

Sinclair Refining Company, plaintiff-appellant, hereinafter referred to as plaintiff, commenced this action in the District Court. It seeks damages for alleged breach of a no-strike clause of a collective bargaining agreement; a declaration of rights; and a permanent injunction.

Count I of the complaint invokes jurisdiction under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185); names Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, as defendants; alleges in substance that the International and Local constitute the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to plaintiff's East Chicago, Indiana, refinery, and that said Unions by their officers, committeemen and other agents caused a strike or work stoppage by approximately 999 of the employees within the bargaining unit on February 13 and 14, 1959 over asserted pay claims of three members, aggregating \$2.19, and which were arbitrable under the grievance procedure of the current collective bargaining agreement, and that the work stoppage was in violation of the no-strike clause of the agreement and caused damages to plaintiff by way of out-of-pocket expenses in the amount of \$12,500.00 for which recovery is sought.

Count II is based on diversity. It names as defendants 24 individuals, employees of plaintiff at the East Chicago refinery, who are committeemen of the Local and agents of the International. It incorporates the allegations of Count I concerning the collective agreement and it seeks damages from the individual defendants in the same amount and for the same work stoppage. It alleges that the individual defendants "contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated" in the strike or work stoppage.

Count III is based on diversity with respect to the same 24 individual defendants named in Count II and asserts jurisdiction under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185), as well as diversity, with respect to the Local and International Unions. In addition to the allegations of Counts I and II it alleges eight previous strikes or work stoppages at the East Chicago refinery during the term of the current collective agreement over matters subject to its grievance procedure and provisions for arbitration, damaging plaintiff greatly in excess of \$10,000.00. It seeks a declaration of the validity and enforceability of the no-strike and grievance provisions of the contract and a permanent injunction restraining and enjoining all of the defendants "from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chi-

ago, Indiana, refinery" covered by the current collective agreement "in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions".

The defendants filed a motion to dismiss and a motion to stay. The District Court denied the motion to stay and denied the motion to dismiss as to Count I (action against Unions for damages) but granted the motion to dismiss and entered judgment dismissing Counts II (action against individual defendants for damages) and III (declaratory and injunctive relief).

The plaintiff appealed the dismissal of Counts II and III.¹ The defendants appealed the denial of the motion to stay.² The plaintiff's appeal (Nos. 13092 and 13136) has not been consolidated with defendants' appeal (No. 13137). However, to avoid unnecessary repetition we elect to treat them as consolidated for the purpose of disposition in one opinion.

The main contested issues presented by plaintiff's appeal are:

(1) Whether 29 U. S. C. A. § 185 precludes suit for recovery of damages from individual union officer-company employees for inducing or participating in a strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement covering the unit to which they belong.

(2) Whether 29 U. S. C. A. § 101 precludes injunc-

1. Plaintiff states that in order to avoid any question of finality of the District Court's orders both an interlocutory appeal (No. 13092) and a regular appeal (No. 13136) were perfected. Plaintiff's appeals have been consolidated.

2. Defendants' appeal was perfected pursuant to 28 U. S. C. A. § 1292(a) (1).

tive relief to restrain a future breach of a no-strike clause of a collective bargaining agreement.

Those presented by defendants' appeal are:

(1) Whether the collective bargaining agreement here involved required the employer to submit to arbitration any claim he might make for damages caused by breach of the agreement's no-strike clause.

(2) Had the employer submitted the claim to arbitration?

We will first consider the issues raised by defendants' appeal. The defendants contend that since the cause of action against the Local and International is based on an alleged violation of the no-strike clause of the collective agreement, the dispute is first subject to adjustment and determination under the arbitration procedure of the agreement and that no action can be brought until these procedures are exhausted. Defendants further contend that the causes of action against all of the defendants must be stayed until a determination of the issues raised in pending arbitrations is made because such issues are the same as those "which the plaintiff has sought the court to decide under the allegations of its complaint". This latter contention is based in part on the contents of an affidavit filed in support of the motion to stay. The affidavit recites that as a result of the work stoppage which occurred February 13 and 14, 1959 certain grievances are pending, pursuant to the grievance and arbitration procedure of the contract, involving disciplinary action taken against some of the individual defendants for allegedly fomenting, assisting and participating in such strike or work stoppage, and that the disputes which caused the eight previous work stoppages referred to in Count III of plaintiff's complaint have all been disposed of pursuant to the grievance procedure of the contract except the question of the compensation of

one worker, which is the subject of a pending grievance. A counter-affidavit filed by plaintiff discloses that the grievances of the individual defendants were filed subsequent to the work stoppage of February 13 and 14, 1959 and involve either the three pay claims aggregating \$2.19 concerning deductions made by the plaintiff from compensation of the employees because of their reporting for work late, which deductions allegedly caused the work stoppage, or relate to the plaintiff's refusal to compensate individual defendants for time spent processing grievances contrary to disciplinary restrictions imposed by plaintiff, because of the work stoppage, on their engaging in such activity. It is further recited that the parties have been unable to agree on a settlement or disposition of the grievances, that both the Union and the plaintiff have named arbitrators but that a third or impartial arbitrator had not as yet been selected.

The collective bargaining agreement here involved is for a term beginning June 15, 1957 and continuing to June 14, 1959 and thereafter unless terminated by either party on sixty days' written notice. The agreement contains both a no-strike clause and an arbitration clause.

The no-strike clause is as follows:

"Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:

"(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or

"(2) For any other cause, except upon written notice by Union to Employer provided:

"(a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.

"(b) In the event an agreement is not reached within forty-five (45) days after the expiration of the

thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice."

Article XXVI of the agreement sets forth the grievance and arbitration procedure. It defines "grievance" as follows:

"A grievance is defined to be any difference regarding wages, hours, or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operation."

The Article then sets forth detailed provisions as to how "grievances" are to be processed and considered culminating with provisions for arbitration if the grievance is not resolved at one of the earlier stages of the procedure.

We are mindful of the congressional policy in favor of the settlement of disputes in the labor-management field through the machinery of arbitration. This was recognized in *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U. S. 448, 456, 77 S. Ct. 912, 1 L. Ed. 2d 972, and since reconfirmed in *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582-583, 80 S. Ct. 1347, 1353, 4 L. Ed. 2d 1409, in which the Supreme Court admonished that in the interpretation of arbitration clauses of collective bargaining agreements "[d]oubts should be resolved in favor of coverage". Nevertheless *Warrior* also affirms that "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit".

Defendants' reliance upon *Warrior* and the similar teachings found in *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564, 80 S. Ct. 1343, 4 L. Ed.

2d 1403 and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424, is misplaced. The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a "difference regarding wages, hours or working conditions". The claim of the employer for damages relates to neither wages, hours nor working conditions. It does not involve a subject which it has contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the "meaning" and "application" of the agreement. Likewise distinguishable by reason of the broad scope of the arbitration clauses involved are *Signal-Stat Corp. v. Local 475, United Electrical, Radio and Machine Workers*, 2 Cir., 235 F. 2d 298; *Tenney Engineering, Inc. v. United Electrical, Radio and Machine Workers*, 3 Cir., 207 F. 2d 450 and *Lewittes & Sons v. United Furniture Workers*, D. C. S. D. N. Y., 95 F. Supp. 851 cited by defendants. We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute. Cf. *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionery Workers, International, AFL-CIO*, 2 Cir., 287 F. 2d 155; *International Union United Furniture Workers of America v. Colonial Hardwood Flooring Co.*, 4 Cir., 168 F. 2d 33, 35; *Cuneo Press, Inc. v. Kokomo Paper Handlers' Union No. 34*, 7 Cir., 235 F. 2d 108, 111, certiorari denied 352 U. S. 912, 77 S. Ct. 149, 1 L. Ed. 2d 119; *United Electrical, Radio and Machine Workers of America v. Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Hoover Motor Express Co. v. Teamsters, Chauffeurs, etc. Union*, 6 Cir., 217 F. 2d 49, 53; *International Union, etc. v. Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536, 540-541, certiorari denied 355 U. S. 814, 78 S. Ct. 15, 2 L. Ed. 2d 31.

Nor are we impressed with defendants' contention that because certain grievances of the individual defendants have been submitted to arbitration under the provisions of the agreement plaintiff is bound to submit its claim for damages to arbitration. The employee grievances involve the pay deductions which precipitated the work stoppage and disciplinary restrictions imposed for participation therein. That some of the underlying issues which are or may become involved in the determination of those grievances may also possibly become an issue to be resolved in the ultimate adjudication of plaintiff's suit—the issues of which are yet to be framed by pleadings as yet unfiled—does not in our opinion require a stay of plaintiff's action. Plaintiff has not submitted the subject matter of its action to arbitration, nor consented to such arbitration, merely because in conformity with its contract it is arbitrating employee grievances which involve some factors or "issues" in common with those which could possibly arise in the suit. The fact that a grievance under arbitration and a court action may share some issue or factor in common does not establish identity of subject matter. What plaintiff has submitted to arbitration under its contract to arbitrate are matters different from the subject matter of its suit. It has not agreed to arbitrate the latter—and submission to arbitration is a matter of contract.

We conclude that the District Court did not err in denying a stay of plaintiff's action.

The District Court's dismissal of Count II of the complaint was based on the view that under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185)³ suits of the nature alleged in Count II are no

3. Hereinafter referred to as Section 301, and which, in so far as pertinent, reads as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between

longer cognizable in state or federal courts. In our opinion the District Court erred in so concluding and in dismissing Count II. The 24 individuals named in Count II are employees of the plaintiff as well as members and officers of the Local Union and agents of the International. They were in the bargaining unit covered by the collective agreement. Whether these individuals are regarded "somewhat as" third party beneficiaries to the collective contract⁴ or that contract, though not signed by or naming them, is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire⁵ they are bound by its provisions. *Young v. Klausner Cooperage Co.*, 164 Ohio St. 489, 132 N. E. 2d 206; *Owens v. Press Publishing Co.*, 20 N. J. 537, 120 A. 2d 442; *McLean Distributing Co. v. Brewery and Beverage Drivers et al.*, 254 Minn. 204, 94 N. W. 2d 514, certiorari denied 360 U. S. 917, 79 S. Ct. 1436, 3 L. Ed. 2d 1534. The individual defendants are bound by the no-strike clause of the agreement. We do not mean to imply that the individual defendant is liable for breaches by others

any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. • • •"

4. Cf. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332, 336, 64 S. Ct. 576, 88 L. Ed. 762.

5. Cf. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 3 Cir., 210 F. 2d 623, 627, affirmed 348 U. S. 437, 75 S. Ct. 488, 99 L. Ed. 510.

which he did not induce but he is liable for his own breach and any he does induce. And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so.

Count II alleges individual breaches by the 24 named defendants as well as their inducement of individual breaches by other employees. The 24 defendants are union officers presumably familiar with the terms of the agreement, including its no-strike clause. In considering a motion to dismiss, the allegations of the complaint must be viewed in the light most favorable to the plaintiff, and all facts well pleaded must be admitted and accepted as true. *Conley v. Gibson*, 355 U. S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80. And we are not now concerned with what defenses might exist; what issues may be framed by subsequent pleading, nor with what the proof to be adduced may establish as to liability or nonliability of any of the defendants. If any set of facts provable under the allegations of Count II warrants recovery under accepted principles of law it states a cause of action. *Central Ice Cream Co. v. Golden Rod Ice Cream Co.*, 7 Cir., 257 F. 2d 417.

Count II seeks to hold the individual defendants liable for their own acts in breach of the contract. They are under a contractual obligation not to participate in a strike or work stoppage in violation of the no-strike clause. The Count alleges such participation.

In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley v. Gye*, 2 E1. & Bl. 216, 118 Eng. Reprint 749, recognizes liability for malicious

interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is a party to the contract. *Wade v. Culp*, 107 Ind. App. 503, 23 N. E. 2d 615.⁶

Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations.

We are unable to agree with the defendants that Section 301 precludes assertion of the liability of individual employees bound by a collective agreement for participating in or inducing a work stoppage in violation of the agreement's no-strike clause where the union is being sued for an alleged breach in connection with the same work stoppage. The provision that a judgment against a labor organization shall not be enforceable against its members does not in and of itself preclude action against or recovery from individual members for their individual breaches of contract. Of course there can be but one satisfaction. The observation in *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, 470, 80 S. Ct. 489, 496, 4 L. Ed. 2d 442, relied upon by defendants, that Section 301 evidences a congressional intention that the union, like a corporation, should be the sole source of recovery was made with respect to an "injury inflicted by it", and in an entirely different context from that here involved. There are strikes or work stoppages without union participation, without the union

6. In *Wade v. Culp* the defendant, Wade, a party to the contract, was sued along with other defendants, strangers to the contract, for interfering with and inducing a breach. Cf. *Worrie v. Boze*, 198 Va. 533, 95 S. E. 2d 192, 63 A. L. R. 2d 1315 and *Motley, Green & Co. v. Detroit Steel & Spring Co.*, C. C. S. D. N. Y., 161 F. 389.

having "called a strike" or being responsible therefor. And there can be work stoppages caused and participated in by some employees but not others.

Defendants place heavy reliance on *San Diego Building Trades Council, etc. v. Garmon*, 359 U. S. 236, 79 S. Ct. 773, 780, 3 L. Ed. 2d 775. But that case involved a determination of whether a state court had jurisdiction to award damages arising out of a union activity—peaceful recognition picketing—which the Supreme Court found "arguably within the compass of § 7 or § 8 of the [National Labor Relations] Act" and thus within a narrow area withdrawn from possible state activity and within which state jurisdiction must yield. The conduct of the individual defendants alleged in Count II of the complaint in the instant case is neither a protected activity under § 157 nor an unfair labor practice embraced within the scope of § 158 of 29 U. S. C. A. A strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement is not an activity protected by federal law. And as conflict is the touchstone of pre-emption the rationale of *Garmon* is inapplicable to bar prosecution of Count II.

In *Wilson & Co. v. United Packinghouse Workers of America*, D. C. Iowa, 181 F. Supp. 809, relied on by defendants, the individual defendant officers of the union were sued individually and as representative of the class and membership of the Local Union in a count sounding in tort only, the claimed tort (at page 818) "being the inducing of a breach of the collective bargaining agreement." Unlike Count II of the complaint here under consideration the individual defendants were not sued in a count sounding in contract as well as in tort. But, apart from these differences, we are not disposed to follow the holding of *Wilson* that Section 301 precludes maintenance of an action for inducement of breach of contract against

7. 29 U. S. C. A. §§ 157 and 158.

the union officers where the union also is sued for breach of contract under Section 301. That the individual defendants in Count II are officers of the Union defendants sued in Count I does not in our judgment insulate them from liability as employees of plaintiff, a status they also occupy, on the theory advanced by defendants and employed in *Wilson* that as officers of the Union they should be immune from liability for inducing a breach of *its* contract. The doctrine of *Hicks v. Haight*, 171 Misc. 151, 11 N. Y. S. 2d 912, that an officer of a corporation is not liable for inducing a breach of the corporation's contract is relied on by analogy to support the claimed immunity. But the New York rule is not without its limitations and is not recognized in a number of jurisdictions (Fletcher on Corporations, Vol. 3, 1947 Rev. Ed. § 1001, pp. 501, 502 and 1960 Cum. Supp. pp. 56-58). In addition the no-strike clause of the collective agreement is binding on the individual defendants as employees whereas the officers or stockholders of a corporation are not personally obligated on a contract of the corporation. A concise answer to *Wilson* is found in *Baun v. Lumber and Sawmill Workers Union et al.*, 46 Wash. 2d 645, 284 P. 2d 275, 286, where it was succinctly pointed out:

"What the statute relied on [Section 301] says * * * is that a judgment against a labor organization shall not be enforceable against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur*."

It is our considered judgment that Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court. It was error to dismiss Count II.

The District Court's dismissal of Count III was predi-

cated on its conclusion that the Norris-LaGuardia Act³ precludes the injunctive relief sought. Plaintiff seeks a permanent injunction operating *in futuro* against all of the defendants, and all to whom notice thereof might come, restraining them from any disruption of or interference with normal employment, operation or production in connection with any dispute which might be the subject of a grievance under the grievance procedure of the collective agreement, or any extension thereof, or any other such agreement containing like or similar provisions.

Norris-LaGuardia, subject to exceptions not here pertinent, withdraws jurisdiction from federal courts to issue an injunction in a case involving or growing out of a labor dispute. It is clear from the specific allegations of Count III that the conduct and work stoppages sought to be restrained are those which result from or involve labor disputes—differences concerning “wages, hours or working conditions” which are subject to the grievance and arbitration procedures. And the relief sought would clearly prohibit persons “participating or interested in such [a] dispute” from “[c]easing or refusing to perform any work * * *.”

In *Order of Railroad Telegraphers et al. v. Chicago & North Western Railway Co.*, 362 U. S. 330, 335, 80 S. Ct. 761, 764, 4 L. Ed. 2d 774, the Supreme Court after referring to the prohibitions of Section 4 of the Norris-LaGuardia Act and observing that said Act defines a labor dispute as including “any controversy concerning terms or conditions of employment * * *” stated:

“Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the

8. 29 U. S. C. A. § 101 and § 104.

language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted."

It is implicit in the teachings of *Railroad Telegraphers* that it is not within a court's prerogatives to impose limitations on the clearly expressed congressional policy embodied in Norris-LaGuardia and that the Act removed the possibility of use of injunctive powers in any labor dispute absent a contrary mandate from the Congress. In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*, 353 U. S. 30, 77 S. Ct. 635, 1 L. Ed. 2d 622, relied upon by the plaintiff, the Court had earlier found such a mandate to exist in the need to accommodate Norris-LaGuardia and the Railway Labor Act, 45 U. S. C. A. § 151 *et seq.* so that the obvious purpose of each of the statutes adopted as a pattern of labor legislation is preserved. The exception to the ban of Norris-LaGuardia there recognized was grounded on explicit provisions of the Railway Labor Act subjecting "minor disputes" to compulsory arbitration and declaring the Adjustment Board's decision "binding" upon both parties in order to avoid any interruption of transportation and attendant injury to the public because of such class of disputes. *Railroad Telegraphers* affirms that the doctrine of *Chicago River* operates within the narrowly confined limits of those requirements and does not even encompass other disputes in the field of railway labor-management so as to authorize injunctive relief against strikes or work stoppages involving other matters. *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U. S. 528, 80 S. Ct. 1326, 4 L. Ed. 2d 1379.

Thus *Chicago River* is not a controlling precedent here and on the facts here alleged we find no mandate in Section 301 to which Norris-LaGuardia must accommodate. *Lincoln Mills* does not say that Section 301 authorizes injunctive

relief clearly prohibited by Norris-LaGuardia. Compelling arbitration is not prohibited by Norris-LaGuardia—enjoining strikes or work stoppages is. And there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history,⁹ which evidences conflict with Norris-LaGuardia.

In so concluding we find ourselves in disagreement with *Chauffeurs, Teamsters and Helpers Local Union No. 795 v. Yellow Transit Freight Lines*, 10 Cir., 282 F. 2d 345,¹⁰ but supported by *A. H. Bull Steamship Co. v. Seafarers' International Union*, 2 Cir., 250 F. 2d 326.

Plaintiff contends that inasmuch as Count III contained a prayer that the court “declare the rights of the parties” it was error for the District Court to dismiss the Count even though injunctive relief is barred. We perceive no error in this connection. Count III does pray a declaration that the no-strike and grievance procedure clauses are legal, binding and enforceable. But no allegation is made that a controversy exists between the parties as to the validity or enforceability of either clause. The Count sets forth alternative conclusions that the conduct of defendants “shows” either that they do not regard the provisions valid and binding or deliberately violated them. Such allegation fails to charge the existence of controversy over validity or enforceability requisite to support an action for declaratory judgment.

The thoroughness of the briefs of the parties has been of material aid to the Court and although we have not made specific reference to some of the many authorities cited and analyzed therein we have considered each of the arguments advanced by the parties in support of their

9. See legislative history appended to *Lincoln Mills*, 353 U. S. 448, 485-546, 77 S. Ct. 912, 923 1 L. Ed. 2d 972.

10. *Certiorari granted* 364 U. S. 931, 81 S. Ct. 378, 5 L. Ed. 2d 364.

respective positions on the issues and discussed those we deemed necessary.

We conclude that the District Court did not err in denying the motion to stay the action nor in dismissing Count III of the complaint but did err in dismissing Count II.

In Appeal No. 13137 the order of the District Court denying defendants' motion to stay is affirmed.

In Appeal Nos. 13092 and 13136 the portion of the judgment order of the District Court dismissing Count III of the complaint is affirmed and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

No. 13137 affirmed, Nos. 13092 and 13136 affirmed in part, reversed in part and remanded.

APPENDIX B.

**OPINION OF THE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA.**

SWYGERT, *Chief Judge.*

The matter is before the court principally on a motion to vacate its order of March 12, 1960, and to grant a rehearing on several motions which were the subject of the March 12th order.

A rehearing has been afforded the defendants. After oral argument and submission of briefs on the motion for rehearing, I have come to the conclusion that the March 12th order should be vacated and a new order entered which modifies substantially the older order. A memorandum setting forth the reasons for the new order seems appropriate.

Dismissal of Count I.

As I understand defendants' contention, it is that if there are possibly protected or prohibited union activities under §§ 7 and 8 of the Labor Management Relations Act, 29 U. S. C. A. §§ 157, 158 involved in the factual situation whereby the "no-strike" agreement was allegedly breached, the court cannot entertain jurisdiction under § 301 of the Act, 29 U. S. C. A. § 185. They cite *San Diego Bldg. Trades Counsel v. Garmon*, 359 U. S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775, and *Plumbers, etc. v. County of Door*, 359 U. S. 354, 79 S. Ct. 844, 3 L. Ed. 2d 872.

The *Garmon* and *Door* cases dealt with pre-emption of state-court jurisdiction where there were present or arguably present protected or prohibited union activities which

came within the jurisdiction of National Labor Relations Board under §§ 7, 8 and 10 of the Act, 29 U. S. C. A. §§ 157, 158, 160. Neither case presented the problem of a conflict between the jurisdiction of the Board and the courts because of a possible overlap of activities protected or prohibited by §§ 7 and 8 and at the same time the basis for a violation of a labor contract enforceable under § 301.

The alleged violation of a collective bargaining contract is the basis of Count I. There is nothing in the record at this point to indicate that the events claimed to constitute a violation of the contract also involved either protected or prohibited activity. But even the presence of such activities would not give preferential jurisdiction to the Board and oust that of the courts. The responsibility of enforcing labor contracts lies in the courts; otherwise there would have been no need for enacting § 301.

Dismissal of Count II.

The Court's attention has been called to two cases not considered at the time the motion to dismiss was originally ruled upon, *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, 80 S. Ct. 489, 4 L. Ed. 2d 442, and *Wilson & Co. v. United Packinghouse Wkrs. of America*, D. C. N. D. Iowa, 1960, 181 F. Supp. 809.

Judge Graven in the *Wilson* case, after an exhaustive discussion of the identical problem, concluded that the officers of the labor union are not individually liable for the inducement of a breach of a collective bargaining contract where the union is being sued under § 301 of the Taft-Hartley Act for the breach. In his opinion, Judge Graven cited the *Lewis* case in support of his conclusion. In that case the Supreme Court in the majority opinion stated [361 U. S. 469, 80 S. Ct. 495]:

“Section 301(b) of the Taft-Hartley Act, 29 U. S.

C. A. § 185(b), provides that 'any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.' At the least this evidences a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it. * * *"

It is clear from the language in the *Lewis* case that a labor union when sued under § 301 must be treated as if it were a corporation. It is also made clear that union members or officers cannot be held individually liable for acts of the union, as, similarly, stockholders and officers of a corporation are not liable for corporate acts.

It is generally the law that officers and employees of a corporation cannot be held liable for inducing a breach of its contract. *Wilson & Co. v. United Packinghouse Wkrs. of America*, *supra*; 30 Am. Jur., Interference § 37; *Hicks v. Haight*, 171 Misc. 151, 11 N. Y. S. 2d 912 (1939); 26 A. L. R. 2d 1270. By analogy, and having in mind the language in the *Lewis* case, a union member or officer cannot be held liable for inducing the breach of a union contract.

The fact that Count II is based on diversity jurisdiction is not determinative of the motion. Section 301 is more than a procedural statute; it is also substantive. The section is the statutory source of federal law governing remedies for violations of collective bargaining contracts. *Textile Wkrs., etc. v. Lincoln Mills of Alabama*, 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972.

Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under § 301 as that section has been construed by the Supreme Court, the conclusion is inevitable that suits

of the nature alleged in Count II are no longer cognizable in state or federal courts.

Dismissal of Count III.

Plaintiff urges that since Lincoln Mills allowed specific enforcement of the agreement to arbitrate the case now compels specific enforcement of the no-strike agreement received in exchange for the promise to arbitrate. It contends that the Norris-LaGuardia Act should not preclude injunctive relief in the case at bar because the conditions which prompted passage of that Act no longer obtain.

That the suit at bar involves a labor dispute within the meaning of § 13(c) of the Norris-LaGuardia Act, 29 U. S. C. A. § 113(c), is beyond dispute. That it also involves an alleged breach of a no-strike clause of a collective bargaining agreement does not alter the fact a labor dispute exists under the definition of § 13(c) of the Act. *A. H. Bull Steamship Co. v. National-Marine Eng. B. Ass'n*, 2 Cir., 250 F. 2d 332.

Since the original ruling on the motion to dismiss Count III, the Supreme Court decided *Order of Railroad Telegraphers et al. v. Chicago & N. Western R. Co.*, 362 U. S. 330, 80 S. Ct. 761, 4 L. Ed. 2d 774. In that case the Supreme Court left no doubt that § 4 of the Norris-LaGuardia Act, 29 U. S. C. A. § 104 withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal "to perform work or remain in any relation of employment" in cases involving *any* labor dispute.

Upon reconsideration and in light of the opinion in *Railroad Telegraphers*, I have come to the conclusion that Lincoln Mills does not remove the sweep of the Norris-LaGuardia Act so as to permit the specific enforcement of a no-strike clause in a labor contract.

Motion to Stay.

Defendants seek a stay of the action on the ground that certain grievances filed as the result of the strike or work stoppage alleged in the complaint are subject to arbitration in accordance with the procedure outlined in the contract. In my opinion the resolution of these grievances by arbitration would not decide whether there was a strike or work stoppage and whether there occurred thereby a breach of the contract by the union which promised not to permit work stoppages or strikes over matters which are subject to arbitration. Lincoln Mills permits a labor union to sue under § 301 for specific performance of a promise by the employer to arbitrate grievances defined in the collective bargaining agreement. For similar reasons, the employer has the right under § 301 to sue the union for a violation of the no-strike clause.

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 80 S. Ct. 1347, 1353, the majority opinion said in part:

“The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate.”

Paraphrasing the above language, Congress by § 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances.

The arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from the issue whether the union violated its contract. For that reason the motion to stay must be denied.

JUDGMENT SOUGHT TO BE REVIEWED.

Sinclair Refining Company,
Plaintiff-Appellant,
 Nos. 13092, 13136

vs.

Samuel M. Atkinson, et al.,
Defendants-Appellees.

Sinclair Refining Company,
Plaintiff-Appellee,
 No. 13137

vs.

Samuel M. Atkinson, et al.,
Defendants-Appellants.

Appeal from the
 United States Dis-
 trict Court for the
 Northern District
 of Indiana, Ham-
 mond Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from in Appeal No. 13137 be, and the same is hereby affirmed.

It is further ordered and adjudged by this Court that in Appeal Nos. 13092 and 13136 that portion of the judgment order of the District Court dismissing Count III of the complaint be, and the same is hereby, Affirmed, and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action be, and the same is hereby, Reversed, and that this cause be, and it is hereby Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

It is further ordered and adjudged by this Court that the costs on these appeals be taxed in favor of Plaintiff, Sinclair Refining Company, and against the Defendants, Samuel M. Atkinson, et al.

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JAMES R. BROWNING, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. [REDACTED] **434**

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner,

vs.

SAMUEL M. ATKINSON, ET AL.,
Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 430.

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner,

vs.

SAMUEL M. ATKINSON, ET AL.,
Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI.**

STATEMENT.

The Petition for Writ of Certiorari failed to set forth Sinclair Refining Company's request for an injunction in Count III of the Complaint filed in this action (See Jt. App. pages 23-24). Count III of the Complaint was brought against an international labor organization and its local affiliate pursuant to Section 301 of the Labor Management Relations Act, 1947 (Sec. 301, 61 Stat. 136; 29 U. S. C. 141) and against various local union officials, in their individual capacities, pursuant to the diversity of citizenship juris-

diction of the Federal District Court. The request for an injunction contained in Count III reads as follows:

“That the defendants, and each of them, their agents, servants, counselors, and all to whom notice hereof may come, be enjoined and restrained, preliminarily at first, and thereafter permanently, from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana refinery covered by the contract between the parties dated August 8, 1957, in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions.”

REASONS IN OPPOSITION TO THE PETITION FOR WRIT.

The petitioner herein has taken the position that its Writ for Certiorari should be granted and at the same time has urged this Court to deny the Petition for Writ of Certiorari filed in this case by the International and Local labor organizations and the individual union officials. We submit that the two Petitions for Writ of Certiorari are inexorably intertwined.

Petitioner Sinclair Refining Company argues that no matter how this Court decides *Chauffeurs, Teamsters & Helpers v. Yellow Transit Freight Lines*, 282 F. 2d 345 (C. A. 10, 1960), there still would remain the important question whether a federal district court has the authority to issue an injunction of the type requested in Count III

of the Complaint set forth above. We submit if such a question remains after this Court's decision in *Yellow Transit*, by necessity the basic issues raised in our Petition for Writ of Certiorari in this case would have to be determined. This conclusion logically follows from the fact that the injunction issued by the Federal District Court in *Yellow Transit* was directed only against a strike then in progress by the defendant union. In the present case, Sinclair Refining Company did not seek the District Court to enjoin any activity then in progress by the defendants, but sought to restrain whole categories of activities which might take place in the indefinite future.

Thus, if this Court were to pass upon the injunctive relief requested by Sinclair Refining Company after a decision is rendered in *Yellow Transit*, the following basic issues raised in our Petition for Writ of Certiorari should be considered:

1. The injunction requested in Count III of the Complaint would place within a federal district court's contempt powers any future work stoppage which is alleged to be in violation of an existing collective bargaining agreement between Sinclair Refining Company and the international and local unions in its East Chicago, Indiana refinery. Among other considerations, in order for this Court to sanction such an extension of a district court's contempt powers, a decision must first be reached that an alleged breach of a no-strike clause of a bargaining agreement is not subject to the arbitrable provisions of the agreement. The implications of this issue are set forth in our Petition for Writ of Certiorari, pages 2-3.

2. Since the injunction sought by Sinclair Refining Company is directed against local union officials in their individual capacities under diversity of citizenship jurisdiction, this Court would first have to determine whether such

a cause of action against individuals for breaches of a collective bargaining agreement can be entertained by a federal court. This basic issue raises important subsidiary questions which have been set forth in our Petition for Writ of Certiorari, pages 3-4.

We do not challenge the importance of the questions raised in Sinclair Refining Company's Petition for Writ of Certiorari. However, we do oppose Sinclair Refining Company's position that its Petition for a Writ be granted without the court considering the significant issues raised in our Petition for a Writ in this case.

Respectfully submitted,

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OCT 23 1961

JAMES R. BROWNING, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 434

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner,

VS.

SAMUEL M. ATKINSON, ET AL.,
Respondents.

**REPLY BRIEF IN SUPPORT OF PETITION FOR
CERTIORARI AND SUGGESTION FOR EXPEDITED
CONSIDERATION OF CASE.**

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**REPLY BRIEF IN SUPPORT OF PETITION FOR
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CONSIDERATION OF CASE.**

May it Please the Court:

1.

Respondents do not challenge the importance of the question raised by our petition but suggest their companion petition also be allowed. The difficulty with respondents' position is that the numerous and speculative questions posed in their petition are not actually presented in the present posture of the case and were not passed on by the courts below. Questions as to the extent to which a court may enjoin continuation *in futuro* of an illegal course of conduct, or as to the breadth or limitations of an injunction, were not reached by the courts below, which simply held that *Norris-LaGuardia* com-

pletely precluded injunctive relief. Such questions, accordingly, are not presented here, nor could they well have been presented below on a naked motion to dismiss, but it may be noted that particularly in the labor field relief *in futuro*, based on past conduct, is no novelty. (See *e.g.*, *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426; *May Dept. Stores v. N. L. R. B.*, 326 U. S. 376.)

2.

It is again respectfully suggested that this case presents clearly the question of whether a contract, collectively bargained under the National Labor Relations Act and containing a negative covenant against strikes, with an affirmative covenant that employee grievances "must" be submitted to a grievance procedure terminating in arbitration, is enforceable by injunction against a union as well as so enforceable against an employer.

Possible problems arising from absence of a "grievance" and absence of a compulsory arbitration clause, existing in *Yellow Transit* (No. 13, this term), now awaiting decision, are not present here. This case is the counterpart in the industrial field of *Chicago River* in the transportation field. Considerations of symmetry in the law require, we believe, a decision like *Chicago River* here. While we do not not think *Norris-LaGuardia* was intended to prohibit federal courts from effectively enforcing agreements to arbitrate, or that a question of adherence to a contract which supposedly settled whatever disputes the parties may have had prior to its making is a "labor dispute" under proper construction of the *Norris-LaGuardia* definition of that phrase, nevertheless the problem of reconciling *Norris-LaGuardia* and *Taft-Hartley* (if that be deemed necessary) is far simpler here than in *Yellow Transit*. The employer here relies not only on Section 301 of *Taft-*

Hartley (as in *Yellow Transit*) but on Section 203 (d) of *Taft-Hartley* stating the national policy in favor of arbitration, and on Section 8 of *Norris-LaGuardia*, also expressing a policy favoring or supporting arbitration.

The question is important and should be settled.

SUGGESTION FOR EXPEDITED CONSIDERATION.

The issue here is closely related to that in *Yellow Transit*, which the Court already has studied and now has under consideration. Lengthy briefs here would probably not be of great assistance to the Court, although briefs explaining and defining the precise issue and the precise positions of the parties might aid the Court. It is suggested that important though this case is, the Court's recent study of the general field in *Yellow Transit* has made this case suitable for early disposition on the summary calendar.

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October 20, 1961.

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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 430

SAMUEL M. ATKINSON, ET AL.,
Petitioners.

vs.

SINCLAIR REFINING COMPANY,
Respondent.

**BRIEF FOR THE PETITIONERS IN NO. 430 AND
FOR THE RESPONDENTS IN NO. 434.**

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

SAMUEL M. ATKINSON, <i>et al.</i> , <i>Petitioners</i> ,	} No. 430.
<i>vs.</i>	
SINCLAIR REFINING COMPANY, <i>Respondent</i> .	} No. 434.
<i>vs.</i>	
SINCLAIR REFINING COMPANY, <i>Petitioners</i> ,	}
<i>vs.</i>	
SAMUEL M. ATKINSON, <i>et al.</i> , <i>Respondents</i> .	

BRIEF FOR THE PETITIONERS IN NO. 430 AND FOR THE RESPONDENTS IN NO. 434.

OPINIONS BELOW.

The opinion of the District Court For The Northern District of Indiana, Hammond Division, is reported at 187 F. Supp. 225 (1960), (R. 42).¹ The opinion of the Court of Appeals for the Seventh Circuit is reported at 290 F. 2d 312 (1961) (R. 65).

JURISDICTION.

The judgment of the Court of Appeals For The Seventh Circuit (R. 81) was entered on April 25, 1961. On July 10, 1961, Mr. Justice Clark extended the time for filing

1. Reference to the Record will be indicated by the letter "R" followed by the page number in the Record printed by the Clerk of this Court.

a petition for certiorari in No. 430 to and including September 22, 1961. (R. 82.) On July 19, 1961, Mr. Justice Clark extended the time for filing a petition for certiorari in No. 434 to and including September 22, 1961. (R. 83.) The petitions in Nos. 430 and 434 were filed on September 22, 1961, and granted on December 11, 1961 (R. 83, 84.) On December 11, 1961, Nos. 430 and 434 were consolidated by order of this Court. (R. 83, 84.) This Court's jurisdiction rests on 28 USC Par. 1254(1).

Pursuant to the Court's order consolidating 430 and 434, this Brief encompasses the position of all the parties who are petitioners in 430 and the same parties as respondents in 434.

QUESTIONS PRESENTED.

A. Questions Presented in No. 430 Are as Follows:

1. The first basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause of a collective bargaining agreement brought by an employer against an international union and a local union under Section 301 of the Labor Management Relations Act (1947), as amended (61 Stat. 156; U. S. C. 185), and against local union officials pursuant to the court's diversity of citizenship jurisdiction pending arbitration of the dispute under the terms of the bargaining agreement. Subsidiary questions involved are as follows:

(a) Whether an employer's claim that an international union, the international's local affiliate, and local union officials, participated in and instigated work stoppage in violation of a no-strike clause of a collective bargaining agreement, raises arbitrable issues under the arbitration provisions of the agreement.

(b) If an employer's claim of breach of a no-strike

clause raises arbitrable issues under the bargaining agreement, whether a federal district court is required to specifically enforce the arbitration provision of the agreement under Sec. 301 of the Labor Management Relations Act and to thereby dismiss, or in the alternative, to stay the employer's suit for damages for breach of the no-strike clause pending decision by the arbitrator.

2. The second basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause of a collective bargaining agreement brought by an employer against an international union and a local union under Section 301 of the Labor Management Relations Act (1947), as amended (61 Stat. 156; 29 U. S. C. 185), and against local union officials pursuant to the court's diversity of citizenship jurisdiction, pending arbitration of common issues of fact and contract interpretation and application which have been raised by grievances submitted to arbitration prior to the initiation of the lawsuit, protesting disciplinary action by the employer against employees who are local union officials for allegedly instigating and participating in a breach of a no-strike clause.

3. The third basic question is whether a federal district court is required to dismiss a suit for damages brought by an employer against employees who are local union officials, in their individual capacities, pursuant to diversity of citizenship jurisdiction for their alleged participation in and instigation of a breach of a no-strike clause of a collective bargaining agreement, which had been entered into between an employer and an international union and its local affiliate. Subsidiary questions involved are as follows:

(a) Whether a cause of action exists under federal

law against employees and union officials for alleged participation and instigation of a work stoppage in violation of a no-strike clause.

(b) Whether a cause of action against employees and local union officials brought under the common law of the State of Indiana, conflicts with federal substantive law under Section 301 of the Labor Management Relations Act.

(c) Whether a cause of action against employees and local union officials, in their individual capacities, for the aforesaid conduct brought under the common law of the State of Indiana, conflicts with the jurisdiction of the National Labor Relations Act, 61 Stat. 136; 29 U. S. C. 141.

(d) Whether the no-strike clause of collective bargaining agreement entered into between an employer corporation and a union organization, imposes individual contractual responsibilities on each employee to the employer.

(e) Whether the aforesaid suit for damages against local union officials in their individual capacities, is a valid cause of action cognizable under state common law.

B. Inasmuch as Our Position, as Respondents, Is Joined With Our Position as Petitioners in the Same Brief, We Believe It Expeditious to Fully Set Forth the Questions Presented by the Grant of Certiorari to the Petitioner in 434. The Petition in 434 Raises Two Basic Questions:

1. The first basic question is whether the Clayton Act, 38 Stat. 738; 29 U. S. C. Sec. 52, and the Norris-La-Guardia Act, 47 Stat. 70; 29 U. S. C. Para. 101, require a federal district court to dismiss an action brought by

an employer for a preliminary and then permanent injunction against an international union, a local union, local union officials and all of their agents, servants, and counsellors from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slow-down or any disruption of, or any interference with, normal employment or normal operation or production by any employee within the bargaining unit at the employer's refinery, which is in support of, or because of any matter or thing which is or could be the subject of a grievance under the present and any future collective bargaining agreement between the unions and the employer. Subsidiary questions raised are as follows:

(a) Whether Section 301 of the Labor Management Relations Act supersedes or has, in effect, repealed or modified the Clayton and Norris-La Guardia Acts.

(b) Whether the requested injunction, which is designed to operate over possible future labor disputes, conflicts with the provisions for resolving collective bargaining controversies established by Section 301 of the Labor Management Relations Act.

(c) Whether the requested injunction conflicts with the jurisdiction of the National Labor Relations Board over labor disputes.

2. The second basic question is whether a federal district court, under established rules of equity, has the power to grant the requested injunction which is designed to operate over future bargaining agreements between an employer and a union.

STATUTES INVOLVED.

Section 301 of the Labor Management Relations Act (1947), 61 Stat. 156, 29 U. S. C. 185, provides, in pertinent part, as follows:

“Sec. 301(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

“Sec. 301(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.”

Section 20 of the Clayton Act, 38 Stat. 738, 29 U. S. C. Sec. 52, provides, in pertinent part, as follows:

“No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the applica-

tion, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other monies or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Section 1 of the Norris-LaGuardia Act, 47 Stat. 70; 29 U. S. C. Par. 101, provides as follows:

"No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

Section 4 of the Norris-LaGuardia Act, 47 Stat. 70; 29 U. S. C. Par. 104, provides, in pertinent part, as follows:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing

out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other monies or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this title."

STATEMENT.

The Petitioners in No. 430, and Respondents in No. 434, are Oil, Chemical and Atomic Workers International Union, AFL-CIO; and its local affiliate, Local 7-210 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to respectively, as the "International" and the "Local"), labor organizations representing production and maintenance employees at Sinclair Refining Company's refinery located in East Chicago, Indiana; and Samuel M. Atkinson, and other named individuals, all employees at the aforesaid refinery who are also members and officials of the Local and members of the International (hereinafter referred to as the "Local Officials"). Sinclair Refining Company is a corporation (hereinafter referred to as the "Employer"), owning and operating the aforesaid oil refinery. The Employer is alleged to be incorporated under the laws of the State of Maine, maintaining its principal office in the State of New York. The Employer is engaged in an industry affecting commerce and subject to the Labor Management Relations Act.

In August, 1957, the Employer and the International and Local entered into a collective bargaining agreement (hereinafter referred to as the "Agreement.") (R., Ex. A. 19.) The Agreement covers wages, hours and working conditions. In June, 1959, the Agreement expired and a new agreement was negotiated and entered into between the Employer and the Union.

Article III of the Agreement contained a no-strike clause, which is one of a type usually found in labor-management contracts, limiting the right of the contracting union to cause strikes or work stoppages during the course of the bargaining agreement. Article XXVI of the Agreement contained a provision for the compulsory arbitration of

any difference regarding wages, hours, or working conditions, between the parties hereto, or between the Employer and an employee, covered by this working Agreement, which might arise within any plant or within any region of operations, which could not be satisfactorily resolved through a grievance procedure, or by settlement of the parties. Article XXVI is followed by an additional paragraph, entitled, Article XXVII, "General Disputes," providing that "[I]n the event any dispute or disagreement arises between the parties hereto regarding wages, hours, or working conditions, which is general in character, or which affects a large number of employees of any one of the Employers to which this agreement is applicable, such dispute shall be referred for settlement to the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, and the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him."

On or about February 13-14, 1959, a work stoppage took place among the employees at the East Chicago refinery. Following the work stoppage, the Employer disciplined twelve employees who were Local Officials for allegedly breaching the no-strike clause of the Agreement by fomenting, assisting, and participating in the work stoppage. The Local denied that any of the twelve Local Officials were in any way responsible for the work stoppage and filed grievances on their behalf with the Employer, as provided by Article XXVI of the Agreement. The Local and the Employer were unable to resolve these grievances so that the right of the Employer to discipline any and all of the Local Officials has been jointly submitted by the Employer and Local to arbitration. As of this date, the dispute still awaits arbitration since there has not been a joint selection of an impartial arbitrator as required by the Agreement. (R. 24.)

During the time the Local was processing the aforementioned grievances, the Employer commenced the subject lawsuit in the United States District Court for the Northern District of Indiana. The Employer sought damages in the sum of \$12,500.00 from the International and Local for breach of the no-strike clause of the bargaining agreement pursuant to Section 301 of the Labor Management Relations Act.

Count I of the Employer's Complaint alleged that the International and Local had breached the Agreement through the acts of the Local Officials (committeemen) and other duly authorized and acting agents in causing the aforesaid work stoppage. (See Complaint, Count I., par. 7, R. 11.)

Count II of the Employer's Complaint sets forth a cause of action for damages in the sum of \$12,500.00 against the Local Officials, in their individual capacities, for conspiring to and causing the alleged breach of the agreement " * * * individually and as officers, committeemen and agents of the * * * labor organizations * * * ." (Complaint, Count II, par. 9, R. 13.)

Count II is based on a common law tort theory and was brought in the Federal District Court pursuant to diversity of citizenship jurisdiction. (Complaint, Count II, par. 1, R. 12.)

Count III of the Complaint sought a declaration of rights and a preliminary, and then, permanent injunction against the International and Local; Local Officials; and their agents, servants, counsellors, and all to whom notice may come from in any way participating in, ratifying, or condoning any strike, stoppage of work " * * * aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slow-down, or disruption of, or interference with, normal employment or normal

operation or production by any employee within the bargaining unit (at the Employer's East Chicago refinery), covered by the contract by the parties * * * in support of, or because of any matter or things which is, or could be, the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which shall contain like, or similar provisions." (Complaint, Count III, par. 2, Prayer, R. 18.) Count III of the Complaint was founded on diversity jurisdiction and Section 301.

All the defendants filed motions to dismiss the complaint, or in the alternative, to stay the action in the trial court. (R. 20-25.) In summary, these motions were based on the following contentions:

1. The issue whether any and all of the defendants breached the no-strike clause of the Agreement was first subject to adjustment and determination under the arbitration procedures of the Agreement.

2. The action should be stayed until a determination has been made on common issues of contract interpretation and application, and fact by an arbitrator over the grievances then pending between the Employer and Local on behalf of the Local Officials.

3. No cause of action exists against the Local Officials, in their individual capacities, by virtue of the provisions of the Labor Management Relations Act.

4. No valid common law action has been set forth in the Complaint against the Local Officials, in their individual capacities.

5. The action for declaratory judgment and injunction against all of the defendants is contrary to the anti-injunction provisions of the Clayton and Norris-La Guardia Acts.

6. The action for an injunction is beyond the equity powers of the court to grant.

The District Court dismissed the action against the Local Officials, in their individual capacities. The Court held that Sec. 301 of the Labor Management Relations Act does not allow recovery against individuals for breach of bargaining agreements, and that the Act " * * * is the statutory source of federal law governing remedies for violations of collective bargaining contracts." (R. 44.) The District Court also held that under established common law principles, union officials, as is the case of officers and employees of a corporation, " * * * cannot be held liable for inducing a breach of (their organization's) contract." (R. 44.) In dismissing the action against the individual defendants, the District Court concluded:

"Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under Sec. 301, as that section has been construed by the Supreme Court, the conclusion is inevitable that suits of the nature alleged in Count II are no longer cognizable in State or Federal courts." (R. 44-45.)

Following the dismissal of the suit against the Local Officials, the Employer moved for leave to file an Amended Count II to the Complaint. The allegations against the Local Officials in their individual capacities, contained in the amendment, repeated those in the original Count II, except for one modification. The individuals are alleged, not only to have caused a breach of the agreement, but, thereby, to have caused the breach of individual employment contracts for every one of the 999 employees alleged to have engaged in the work stoppage. (R. 56.) The trial court denied leave to amend the Complaint. (R. 59.)

The District Court also dismissed the action for a declaratory judgment and injunction against all of the parties on the basis that " * * * the suit at bar involves a labor dispute within the meaning of * * * the Norris-LaGuardia

Act * * *." (R. 45.) In this light the Court further held that the Labor Management Relations Act does not remove the coverage of prior anti-injunction legislation " * * * so as to permit the specific enforcement of a no-strike clause in a labor contract." (R. 45.)

The District Court denied the defendant's motions to dismiss or stay the action pending arbitration of the dispute. The court held that Section 301 assigned to the court " * * * the duty of determining whether the union had breached its promise not to strike over arbitrable grievances." (R. 46.) The court reasoned that since a labor union can sue in the federal courts for specific performance of an employer's agreement to arbitrate a dispute, similarly, the employer has a right to sue the union for violations of a no-strike pledge. (R. 46.)

Regarding the pending arbitration between the parties the District Court denied the defendants' position and summarily held that the " * * * arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from the issue whether the union violated its contract." (R. 46.)

The International and Local appealed the District Court's denial of their motions to dismiss or stay the action pending arbitration to the Court of Appeals For The Seventh Circuit pursuant to Title 28 of the United States Code, Sec. 1292(a)(1). The Employer appealed from the dismissal of the action against the Local Officials and its action for a declaratory judgment and injunction to the Court of Appeals, pursuant to the interlocutory appeals provisions of Title 28, U. S. C., Sec. 1292(b). On appeal, the Court of Appeals affirmed, in part, and reversed in part the District Court's findings. (Opinion of Court of Appeals, R. 65.) The dismissal of that part of the law

suit seeking a declaratory judgment and injunction was affirmed. The Seventh Circuit sustained the District Court's holding that the Norris-La Guardia Act bars such an action. As the trial court, the Seventh Circuit concluded that " * * * there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history, which evidences conflict with Norris-La Guardia." (R. 78.)

The Court of Appeals reversed the District Court's decision, dismissing the action against the Local Officials in their individual capacities. Contrary to the trial court, the Court of Appeals reasoned that Section 301 does not preclude liability of individual employees for inducing, or participating in, the work stoppage during the term of a no-strike clause of a bargaining agreement. In so holding, the Court of Appeals concluded that whereas, suit against individuals could not be maintained under 301, this did not foreclose an action against individual members and officials for breach of individual contracts of employment. In its decision, the Court of Appeals appears to reason that the provisions of a bargaining agreement between an employer and a union are read into and become a part of an employment contract between every individual in the bargaining unit and the employer. (R. 73-76.)

In remanding the action against the Local Officials, the Court of Appeals also rejected the District Court's finding that no common law action exists against the individuals, as agents and officers of their organization. The Court of Appeals distinguished the immunity of officers and agents of a corporation for participating in breaches of obligations entered into by their corporation with third parties. Unlike corporate officials, the court concluded that the Local Officials, in their role as employees, assume personal contractual obligations to their employer by

virtue of the bargaining agreement signed by their union. (R. 76.)

The Court of Appeals sustained the District Court's denial of a motion to dismiss or stay pending arbitration. As the trial court, the Court of Appeals concluded that the alleged breach of the no-strike provision of the agreement " * * * does not involve a subject which [the employer] has contracted to submit to arbitration." (R. 71.) In so holding, the court concluded " * * * that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute." (R. 71.)

The Court of Appeals also sustained the District Court's holding that the pending arbitration, challenging the Employer's disciplinary action against the Local Officials for instigating and participating in the work stoppage, was not relevant to the issues raised by the lawsuit. (R. 71-172.)

**SUMMARY OF PETITIONERS' ARGUMENTS
IN CASE NO. 430.**

I. The trial court erred in denying the defendants' motion to stay this action and order the Employer to exhaust its remedies through arbitration. The trial court has the power to order a stay. The court's refusal to exercise this power was, in effect, in derogation of its responsibility to enforce arbitration agreements of collective bargaining contracts.

II. The issues raised in the Employer's complaint are subject to the primary jurisdiction of the arbitrator. The test of arbitrability, as recently established by the Supreme Court of the United States, is whether a collective bargaining contract is susceptible to an interpretation that covers the asserted dispute. Based on this test alone and the four corners of the bargaining contract between the parties, the trial court was clearly in error in refusing the stay.

III. The trial court was also in error in refusing to stay this action until the final determination of the pending arbitrations between the parties. The issues which shall be decided by arbitration are fundamentally the same which are presented by the complaint at law. A determination of the issues at arbitration will have a direct and binding effect on the continuation and outcome of this litigation. The denial of a stay, therefore, conflicts with the effective enforcement of arbitration agreements and awards and is contrary to the national labor policy and basic principles of the common law.

IV. The Employer does not set forth any cause of action against the Local Officials in their individual capac-

ities. Section 301 of the Taft-Hartley Act did not confer upon the Federal courts power to entertain an action against local union officials for breach of a collective bargaining agreement. The Employer's attempt to create a cause of action against the Local Officials under diversity of citizenship jurisdiction has no foundation in the common law and conflicts with the exclusive procedures established by Congress for the resolution of labor disputes.

SUMMARY OF RESPONDENTS' ARGUMENTS IN CASE NO. 434.

The Employer's request for an injunction against all future interferences with the grievance procedure of the bargaining agreement between the parties conflicts with the federal anti-injunction policy embodied in the Clayton and Norris-LaGuardia Acts. Furthermore, even if such an injunction had not been disallowed by Congressional action it is contrary to basic equity principles. The injunction would attempt to reach all forms of possible disputes under new bargaining agreements in the future. The effect of such an injunction would be to place primary control over the adjustment of labor-management disputes back into the courts in disregard of the integrated procedures developed and approved by Congress.

PETITIONERS' ARGUMENTS IN CASE NO. 430.

I.

THE DISTRICT COURT SHOULD HAVE STAYED THE ACTION AGAINST ALL OF THE DEFENDANTS BECAUSE THE ISSUE WHETHER ANY OR ALL OF THE DEFENDANTS BREACHED THE NO-STRIKE CLAUSE OF THE AGREEMENT IS FIRST SUBJECT TO ARBITRATION.

A. The Defendants' Motions to Dismiss or Stay the Action Until the Employer Exhausted Its Remedies Before an Arbitrator Should Have Been Granted by the District Court Under the Court's Power to Enforce Bargaining Agreements Conferred by Section 301 of the Labor Management Relations Act.

While this litigation has been in progress, the Supreme Court of the United States decided three landmark cases which unequivocally established arbitration as the prime method of resolving labor controversies arising during the term of collective bargaining agreements. *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960); *United Steelworkers v. Enterprise Wheel & Car Co.*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960).

These decisions of the Court forged a link with the basic principles which had been set down in *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957), so as to fashion a body of fundamental rules delineating the powers of courts and labor arbitrators. The *Lincoln Mills* decision gave mature status to

the arbitration process by directing the federal courts to enforce arbitration clauses of bargaining agreements and thereby assuring its standing as an integral part of national labor policy.

In *Lincoln Mills*, the Court upheld a union's right to sue under Section 301 of the Labor Management Relations Act for specific performance of an agreement with an employer to arbitrate unresolved grievances. Although the International and Local in the subject action were before the trial court as defendants, their position is comparable to the plaintiff-union in *Lincoln Mills*. In effect, the defendant unions were seeking the trial court to enforce the plaintiff-employer's arbitration commitment contained in the Agreement between the parties. Specifically, we submit that the Employer's claim that the International and Local and their officers and agents violated the no-strike clause of their Agreement raises arbitrable issues.

Lincoln Mills held that either party to a collective bargaining agreement has the right to submit the refusal to arbitrate by the other party to a district court for an order compelling performance. It is inconsistent with this holding to allow one of the parties to disregard the arbitration process and subject the other party to a suit for breach of their agreement over a dispute which properly is within the jurisdiction of this process.

The defendants, therefore, by seeking a stay compelling arbitration of the plaintiff-employer's claim that the no-strike clause has been breached are in the same position as though they had initiated an action for specific performance.

Prior to *Lincoln Mills* there was dispute whether the power of district courts to stay labor disputes under bargaining agreements pending arbitration was controlled by

the Federal Arbitration Act, 61 Stat. 669, U. S. C. 1. The Arbitration Act authorizes federal courts to stay suits for breach of contract if the parties had a prior agreement to arbitrate. We submit that questions concerning the relevancy of the Arbitration Act to collective bargaining agreements has been rendered moot by *Lincoln Mills*.

The Supreme Court in *Lincoln Mills* did not find it necessary to make any ruling on the Arbitration Act because the power of the district courts to order specific performance was based exclusively on Section 301 of the Labor Management Relations Act.

Although the issue has not been directly settled by the Supreme Court, whatever was the conflict before *Lincoln Mills* there has been uniform authority since that it is incumbent on the federal courts to stay disputes brought under Sec. 301, which properly belong to arbitration. *Drake Bakeries v. Bakery Workers*, 294 F. 2d 399 (C. A. 2, 1961), *en banc* decision reversing 287 F. 2d 155 (1961); *Yale & Towne Mfg. Co. v. Machinists*, 49 LRRM 2652 (C. A. 3, 1962). Cf. *Vulcan-Cincinnati v. Steelworkers*, 289 F. 2d 103 (C. A. 6, 1961) and the opinion of the Seventh Circuit in the subject case, which are contrary to the foregoing decisions on the issue of the arbitrability of breaches of no-strike clauses, but do not question the fundamental principle that actions subject to arbitration under bargaining agreements should be stayed. Cf. Prior *Lincoln Mills* decision by Seventh Circuit in *Cueno Press v. Paper Handlers' Union*, 235 F. 2d 108 (1956) cert. den'd 352 U. S. 912 (1957).

The identity of the issues raised by an action for specific performance to compel arbitration and a motion to stay pending arbitration was well stated by the District Court of Connecticut, shortly after *Lincoln Mills*. In *Armstrong-Norwalk Rubber Corp. v. Local Union No. 283*, 167 F. Supp. 817 (D. C. Conn., 1958) appeal dis'd 269 F. 2d

618 (C. A. 2, 1959), the court granted a defendant-union's application for a stay pending arbitration in a suit for damages for breach of a bargaining agreement. In so holding, the court reasoned that its authority derived directly from *Lincoln Mills*:

It is now settled that under Sec. 301(a) of the Labor Management Relations Act * * * Federal courts have jurisdiction to determine the obligations of parties to arbitrate disputes * * *. *Lincoln Mills*, it is true, was a suit to compel arbitration; but a correlative of the power to compel is the power to refuse to do so. * * * [W]hether arbitration should be ordered to go forward or stayed—is identical with *Lincoln Mills*; and it is this which determines jurisdiction rather than what party brings the suit. (167 F. Supp. 817, 818.)

B. The Collective Bargaining Agreement on Its Face Demonstrates That There Is a Responsible and Reasonable Basis to the Defendants' Position That This Dispute Is Subject to Arbitration.

In sustaining the trial court's decision that the alleged breach of the no-strike clause did not raise arbitrable issues, the Court of Appeals based its decision on a finding that the arbitration provisions of the Agreement do not encompass this type of dispute. The Seventh Circuit's decision does not reject our argument that disputes under Sec. 301 should be stayed if they are arbitrable. Rather, the Court rested its conclusion on its interpretation of the arbitration provisions of the Agreement. The Court of Appeals stated:

"The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a 'difference regarding wages, hours, or working conditions.' The claim of the employer for damages relates to neither wages, hours, nor working conditions. It does not involve the subject which it has

contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the 'meaning' and 'application' of the Agreement. * * * We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute." (R. 70-71.)

We do not dispute the governing rule of law implicit in the Court of Appeals' reasoning. We submit, however, that the Court was in error in rejecting arbitration by impliedly concluding that its interpretation of the arbitration provisions of the Agreement forecloses other reasonable interpretations. We submit that this Court has assigned a more limited function to the federal judiciary in determining the arbitrability of labor disputes than that which was assumed by the Seventh Circuit. An analysis of the *Warrior* decision is particularly significant in this regard.

There is no doubt of the Supreme Court's intention to limit as much as possible the judiciary's interjection into the merits of a labor controversy when arbitration is an alternative. This Court recognized that it is necessary for a court to make some judgment regarding the terms of a collective bargaining agreement when faced with the problem of determining the arbitrability of a labor dispute. Each of the Supreme Court's decisions in *American Manufacturing*, *Warrior* and *Enterprise Wheel*, repeats and underscores the admonition that a court must not allow itself to impinge upon substantive issues of a dispute in determining whether the dispute is subject to arbitration.

American Manufacturing established the rule that whether a dispute will be ordered to arbitration, must not depend upon a court's predetermination of the merits of the claim of the party alleging a wrong. The *Warrior* de-

cision, companion to *American Manufacturing*, went further to limit the possibility of judicial interference with an arbitrable dispute. In *Warrior*, this Court not only stated that the judiciary may not review the substantive rights of a party governed by a bargaining agreement in deciding the issue of arbitrability, but a court must consciously avoid an indirect judgment on the merits by imposing its interpretation of the purely procedural terms of an agreement, which set forth the arbitration procedures.

In furthering a national policy favoring arbitration, *Warrior* necessarily requires the conclusion that as a corollary to an arbitrator's sole authority to determine the merits of a controversy, he must have extensive power to pass upon his own jurisdiction. In *Warrior* a union brought suit in a district court for a specific performance of the arbitration clause of its bargaining agreement over a dispute whether the employer had the right to contract out work, which had been performed by members of the bargaining unit. The arbitrator in *Warrior* was given authority over differences between the employer and the union " * * * as to the meaning and application of the provisions of * * * [the] agreements * * * ." In addition to this standard arbitration clause the contract specifically excluded " * * * matters which are strictly a function of management * * * ." The trial court in *Warrior* refused to order arbitration, concluding that the decision to contract work, on its face, was within the exclusionary provision of the arbitration clause as being strictly "a management function." As in *American Manufacturing* this Court held that the trial court had given too great a scope to its power to determine arbitrability. The Supreme Court held that judges must avoid placing their own interpretations on provisions of bargaining agreements in lieu of other reasonable interpretations, even if the issue goes to the basis of the arbitrator's authority. In the particu-

lar case, the court concluded that it must be left up to the arbitrator to decide whether contracting out was strictly a management function before the union's claim that the contracting out was in violation of other provisions of the agreement could be legitimately considered. The rule of law referred to by the Seventh Circuit in the subject case (R. 71) emerges from the *Warrior* opinion:

"An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (363 U. S. 574, 582-583.)

In requiring the judiciary to place a self-imposition on its power, this Court acknowledged the greater social value of the arbitration process as an alternative to formal litigation:

"* * * the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provision of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator." (363 U. S. 574, 585.)

We submit that if the arbitrability test of *Warrior* is properly applied to the present dispute, then it cannot be said with positive assurance that the arbitration provisions of the Agreement between the parties are not susceptible to an interpretation that covers the asserted dispute.

There is no apparent controversy that the arbitrator's jurisdiction under the Agreement is over "* * * any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement * * *." (Agreement, Art. XXVI, par. 1, R. 19); (see also decision of Court of Appeals at R. 70.)

The defendants submit that the above definition of the scope of an arbitrator's jurisdiction is sufficiently broad to encompass a claim by the employer that the international and local and their agents and officers violated the no-strike clause of the Agreement contained in Article III.

The terminology of Article XXVI, par. 1, defining an arbitrator's jurisdiction, are commonplace in labor agreements. The use of "hours, wages and working conditions" is reasonably understood to define the entire area of subjects for labor negotiations. The exact language is used in the Labor Management Relations Act to define the whole range of bargainable issues for the purpose of imposing a mutual obligation upon employers and unions to bargain in good faith. This language is contained in Section 8(d) of the Act, 29 U. S. C. 158(d) and taken with the right of labor to organize, which is guaranteed under Section 7 of the National Labor Relations Act, 29 U. S. C. 157, forms the cornerstone of the National Labor policy. The pertinent part of Section 8(d) reads as follows:

"* * * to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to *wages, hours, and other terms and conditions of employment*, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party * * *." (Emphasis added.)

The Court of Appeals' conclusion that the arbitration clause in *Warrior* is broader than in the subject case, is difficult to accept in light of the provisions of the Labor Management Relations Act. The clause in *Warrior*, providing for the arbitration of all disputes or differences as to the "meaning" and "application" of the Agreement, follows the language of Section 203(d) of the Act. This section is the source of the Federal Mediation and Con-

ciliation Services function of providing a panel of arbitrators upon the request of parties to a labor agreement. Section 203(d) is designed to encourage the use of arbitration as a means of settling disputes. The section reads in pertinent part as follows:

“Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.”

If there is any difference between the scope of disputes covered by Section 8(d) and Section 203(d) of the Act, the likelihood is that Section 8(d) is the more comprehensive. It should be noted that the language of Article XXVI, par. 1, could reasonably include any labor dispute between the parties, which might arise during the term of the bargaining agreement, whether or not the dispute concerns an interpretation or application of existing contract provisions. It is highly unlikely that the parties to the Agreement meant a narrower scope of arbitrable disputes than that contained in Section 203 (d) since Article XXVI, par. 8 of the Agreement provides that the impartial arbitrator “* * * will be selected in accordance with the procedure of such Federal Mediation and Conciliation Service.”

Although neither the Court of Appeals nor the District Court held that the dispute was *per se* not “a grievance,” we believe that this may be argued by the Employer through inferences drawn from the opinions of the courts below. We submit that such a forced and restricted definition of “grievance,” in this context, would be incompatible with the *Warrior* ruling. From the four corners of the Agreement, the intent of the negotiators appears to give breadth to the definition of a grievance as it is used in Article XXVI, par. 1. Paragraph 1 specifically defines a grievance as “any difference between parties or between

the employer and an employee." This distinction of differences directly between the parties to the Agreement, and those only involving an individual employee's complaint, is reinforced by the fact that the procedure for processing "employee grievances and disputes" is set forth in paragraph 2 of Article XXVI as a separate section. We submit that paragraph 2 was not designed as the exclusive means for bringing disputes to arbitration. This position is reinforced by paragraph 3 of Article XXVI, which provides a time limit for submission of a grievance by the employer *or* union " * * * within sixty (60) days from the date on which the complaint or grievance arose * * * ."

Our position that the parties did not conceive of arbitration with very limited jurisdiction, is borne out by the language used in other paragraphs of Article XXVI. Paragraph 6 requires a final attempt between the parties to adjust differences before arbitration. It is significant that this paragraph provides that the President of the International and the Director of Industrial Relations for the Employer, are to attempt to resolve "grievances *or disputes*" (emphasis added), which have not been settled by local subordinate management representatives and the local union officials.

Our interpretation of the arbitration provisions of the Agreement are reinforced by Article XXVII. This short article specifies that "any dispute or disagreement" concerning wages, hours or working conditions, which is of a general nature, is to be submitted for settlement to the Employer's Director of Industrial Relations and the President of the International. Article XXVI mirrors the provisions of paragraph 6 of Article XXV. A reasonable construction of Article XXVII would require that disputes of a general character would be submitted directly to top management and labor officials, and if then they

could not be resolved, to arbitration. We hardly believe that Article XXVII is consistent with the view that the parties meant arbitration to play a limited role during the course of their bargaining relationship.

The lesson of *Warrior* is that the problem of separating issues of arbitrability from other substantive issues in a labor dispute, is not dissolved simply by the courts limiting themselves to a construction of only the arbitration provision of a bargaining agreement when faced with determining the initial jurisdiction of the arbitrator. A decision of the Seventh Circuit shortly after its opinion in the present action appears to fit comfortably with this Court's dictates in *Warrior*. In *Nepco Unit v. Nekoosa-Edwards Paper Co.*, 287 F. 2d 452 (C. A. 7, 1961), a union brought suit for specific performance to enforce arbitration over an employer's action in assigning an employee from outside the union's bargaining unit to a job vacancy within the unit. The employer contended that the dispute was not arbitrable because the bargaining agreement gave the employer complete discretion over job assignments. The arbitrator had jurisdiction to interpret and apply the contract. The Seventh Circuit ordered arbitration, but refrained from deciding the merits of the employer's position. In so holding, the Seventh Circuit stated that the arbitrator would have the prerogative of agreeing with the employer's contention that the dispute, in fact, was not subject for review by arbitration. In referring the matter to an arbitrator, the Seventh Circuit underscored the policy pronouncement of the Supreme Court " * * * favoring the use of arbitration as a means to achievement of industrial peace * * *."

The realities of the Seventh Circuit's method of ending litigation in *Nepco Unit* were explicitly set forth in a recent decision by the District Court for the Southern District of Texas in *Chemical Workers v. Jefferson Co.*,

48 LRRM 2974 (S. D. Tex., 1961). The court ordered specific performance of an arbitration clause concerning the employer's action in forcing a union member into retirement. The employer maintained that the issue was not arbitrable because retirement was solely a management decision under the bargaining agreement. The district court recognized that the arbitrator might concur with the employer's interpretation of the retirement provision of the agreement. Nevertheless, the court consciously refrained from prejudging the issue and concluded:

"If these observations come close to an assertion that as a practical matter under present law the arbiter is to decide his own jurisdiction to act (to determine whether given matter is arbitrable) it is just that circumstances under which a court could say that [an] arbitration provision expressly provides, or there is the most forceful evidence of purpose to provide, for exclusion of [a] grievance from arbitration would seem hard to find." (48 LRRM, 2974, 2976.)

See recent decision of the Court of Appeals for the Ninth Circuit in *Engineers Union v. Crooks Bros.*, 48 LRRM 2988 (C. A. 9, 1961) in accord with the reasoning of the courts in *Nepco Unit* and in *Jefferson Co.* See also, William B. Gould, *The Supreme Court and Labor Arbitration*, 12 Lab., L. J. 331 (1961) in which the author, writing shortly after the Supreme Court's rulings in *American Manufacturing, Warrior* and *Enterprise Wheel*, speculates that the impact of these decisions will be to place most questions of arbitrability in the hands of the arbitrators.

C. The Trial Court Did Not Have Authority to Refuse to Stay the Action by Concluding that Alleged Breaches of No-strike Clauses, as a Class of Labor Disputes, Cannot Be Subject to Arbitration.

Unlike the Court of Appeals, the district court's opinion does not engage in an interpretation of the arbitration provisions of the agreement. The district court appears to hold that such considerations are not necessary, since " * * * Congress by (Sec.) 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances." (R. 46.) We fail to see how an alleged breach of the no-strike clause by the International and/or the Local has been carved out as an exception to arbitrable disputes by congressional mandate. No authority has held that alleged breaches of no-strike clauses as a matter of law can never be subjects for arbitration. In his Memorandum of Decision, the District Judge appears to reason that the issue of whether a work stoppage occurred over matters which are subject to arbitration does not raise any arbitrable questions. We submit that the effect of the trial court's reasoning is contrary to a developed industrial common law concerning the interpretation and application of no-strike clauses.

The trial court may have reached a decision by assuming that a no-strike clause is an absolute promise by the International and Local to assume liability, *individually and severally*, for losses resulting from every work stoppage which might occur. This is not an accepted understanding of such contract provisions.

The defendants submit that the question which should be presented to an arbitrator is not simply what are the damages to be assessed against the defendants for a work stoppage. There are a number of significant, prior issues

which must be resolved before that question is reached. *The first major question is: Was there a work stoppage in violation of the no-strike clause of the agreement?* This query requires an interpretation by the arbitrator of the extent of responsibility assumed by the defendant unions for work stoppages. Fundamental to answering this question is the determination whether unions stand as guarantors for every stoppage which occurs regardless of their responsibility, in fact, for its occurrence.

Major court and arbitration decisions prior to *American Manufacturing, Warrior and Enterprise Wheel*, had developed a body of precedent requiring that the interpretation and application of a no-strike clause be left to arbitration. These decisions took cognizance of the fact that the courts have no right to set the limits of a union's responsibility for a work stoppage in lieu of arbitration. They also reflected the accepted view of arbitrators that there are limits, the extent of which depends on contract interpretation and a hearing on the facts.

In *Signal-Stat. v. U. E.*, 235 F. 2d 298 (C. A. 2, 1956) cert. den'd 354 U. S. 911 (1957), the Second Circuit stayed the action and ordered the employer to submit the issue of the defendant-union's alleged breach of a no-strike clause to arbitration in a suit for damages by the employer for breach of a collective bargaining agreement.

The same view on the arbitrability of an alleged breach of a no-strike clause has been accepted by the Third Circuit prior to the recent decisions of the Supreme Court. The District Court of New Jersey in *Tenney Engineering, Inc. v. U. E.*, 174 F. Supp. 878 (D. C. N. J., 1959), ordered arbitration of a claimed breach of a no-strike clause in a suit for damages by an employee. The New Jersey District Court acted upon the direction of the Court of Appeals which had ruled that a stay was the proper remedy for suits brought under Section 301 of Taft-Hartley. See

Tenney Engineering Inc. v. U. E., 207 F. 2d 450 (C. A. 3, 1953). The District Court's decision contains an excellent and concise statement why the undisputed occurrence of a work stoppage does not automatically presume union liability and, consequently, why arbitration is necessary:

"Here, on the contrary, the Union alleges the strike or work stoppage was a wildcat affair, for which it had no responsibility. It is this very issue of responsibility for this strike or work stoppage which this Court has just found to be the proper subject of arbitration, not of litigation." (174 F. Supp. 878, 881.)

The Third Circuit's recent decision in *Yale & Towne* reinforced its earlier view of the effect of a no-strike clause in light of this Court's decision in *Warrior*:

"* * * we may also find an answer to the Company's contention that the strike constituted a material breach of the agreement, thereby excusing it from proceeding to arbitrate. That is made clear by what the Court said in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U. S. at 579: 'The collective agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant.' * * * [t]he question here is not merely to determine whether a strike took place. Resolution of that question may well raise collateral problems involving past practices and recognized responsibilities of the parties insofar as a work stoppage is concerned. That, in turn, may require an examination of the bargaining history and grievance settlements, which admittedly we cannot do." (49 LRRM, 2652, 2654.)

The trial court in *Tenney* made specific reference to the Seventh Circuit's decision in *Cuneo Press*, 235 F. 2d 108 (1956). The opinion in *Tenney* points out that the only reason the Court of Appeals in *Cuneo* did not order the

alleged breach of a no-strike clause to arbitration was because the trial court * * * "found that the Union had in fact caused the strike which constituted the breach of the no-strike clause." (174 F. Supp. 878, 881.) We submit that such a determination of the merits of an arbitrable dispute by a court, coming *after American Manufacturing, Warrior, and Enterprise Wheel*, would be unquestionably violative of the Supreme Court's mandate.

The same result as *Signal-Stat* and *Tenney* was reached by the District Court of Connecticut in *Armstrong-Norwalk Rubber Corp. v. Local Union No. 283*, 167 F. Supp. 817 (D. C. Conn., 1958), in which the question of a union's responsibility for a work stoppage in violation of a no-strike was ordered to be determined by arbitration. See also, *Lewittes & Sons v. United Furniture Workers*, 95 F. Supp. 851 (S. D. N. Y., 1951); and *Butte Miners' Union v. Anaconda Company*, 159 F. Supp. 431 (D. C., Mont. 1958) aff'd 267 F. 2d 940 (C. A. 9, 1959). *United Construction Workers v. Haislip Banking Co.*, 213 F. 2d 872 (C. A. 4, 1955), cert. den'd 350 U. S. 847 (1955), is a landmark decision establishing the principle that a union is not a guarantor for every work stoppage during the life of a no-strike agreement.

The above cited decisions are completely consistent and mirror the overwhelming view among labor arbitrators that there are limits to a union's liability for strikes under the most unqualified language employed in agreements not to engage in any form of work stoppage.

In *Signal-Stat* the no-strike agreement was almost identical to that contained in the subject contract between the plaintiff and the defendant unions. The agreement in *Signal-Stat* read:

"During the term of this agreement there shall be no strikes, stoppages or lockouts for any cause or reason whatsoever * * *."

The no-strike clause in *Armstrong-Norwalk* was stated in even stronger language than either in *Signal-Stat* or the subject contract. The *Armstrong-Norwalk* clause read:

"* * * the Union agrees not to engage, encourage, sanction, or approve any strike, stoppage, slow-down, or other interruption of work during the life of this agreement. *On the contrary, the Union will actively discourage any strikes, stoppage, slow-down, or other interruptions of work in violation of the agreement.*" (Emphasis added.)

As in *Armstrong-Norwalk*, the contract in *Tenney* spelled out its responsibility not to cause a work stoppage and to restrain its members from taking such an action.

See the no-strike clauses interpreted and applied by arbitrators in the following cases: *Oregonian Publishing Co.*, 33 LA 574 (1959); *Baldwin-Lima-Hamilton Corp.*, 30 LA 1061 (1958); *Newark Newsdealers Supply Co.*, 20 LA 476 (1953); *Hoffman Beverage Co.*, 18 LA 869 (1952); *Canadian General Electric Co.*, 18 LA 925 (1952); and *Motor Haulage Co.*, 6 LA 720 (1947). These cases are discussed in detail below.

D. Whether or Not An Arbitrator Would Find that the Defendants have Violated the No-strike Clause and Award Damages, and Whether He Would have the Power to do so Is Conjectural and Involves a Premature Intrusion Into an Arbitrator's Jurisdiction.

The decisions of the courts below to withhold the dispute from arbitration cannot be justified because the Employer seeks damages. We have already demonstrated that a court cannot determine arbitrability by reviewing the merits of a controversy. The Supreme Court's decision in *Enterprise Wheel* makes it clear that a court cannot make an indirect judgment of a dispute by presuming

and then passing upon the remedy which would be ordered by an arbitrator should he find contract violation.

In *Enterprise*, a union sought specific performance of an arbitration award which reduced the discipline against employees who had participated in an unlawful work stoppage from discharge to a short term suspension. The trial court refused to enforce the award, holding that the arbitrator was limited to finding whether the employees had participated in a violation of the bargaining agreement as alleged by the employer, but not to varying the punishment for violation. The trial court upheld the employer's contention that the power of the arbitrator did not extend to reviewing remedies for contract violation because the agreement gave the arbitration jurisdiction to hear only "differences as to the meaning and application" of the terms of the agreement.

The rule of law set forth in the Supreme Court's majority opinion appears as an admonition to the courts not to conflict with the arbitrator's basically equitable function through a narrow construction of arbitration clauses:

"When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations." (363 U. S. 593, 597.)

See in accord *Machinists v. Cameron Iron Works*, 292 F. 2d 212, (C. A. 5, 1961), cert. den'd, 368 U. S. 926 (1961).

In determining the arbitrability of this dispute, the trial court should have given weight to accepted arbitration practice. It is significant that the majority of arbitrators as reflected in their reported decisions, have recognized that they have a wide range of remedial powers to

deal with union violations of their no-strike agreements. Many arbitrators have recognized their right to assess damages against a union as part of their power to afford relief for contract violations.

A recent decision by Arbitrator Paul L. Kleinsorge in *Oregonian Publishing*, 33 LA 574 (1959), is a prime example of the mainstream of thought among labor arbitrators.

In *Oregonian Publishing*, the company brought a grievance to arbitration against the union, alleging breach of the no-strike clause resulting from a short-lived work stoppage. The no-strike clause in this case followed similar lines as that found in the present action:

“During the life of this agreement [the union] agrees not to strike and [the company] agrees not to lock out [the union].”

It is important to note that the contract clause which defined the arbitrator's jurisdiction in *Oregonian Publishing* used much more restrictive language than that contained in the Sinclair Refining contract. The *Oregonian* contract stated that the arbitrator “* * * has the power to decide all questions which may arise concerning the construction to be placed upon any clause of the contract or alleged violation of the contract.” The union in *Oregonian* questioned the power of the arbitrator to decide the alleged contract violation and award damages. Consistent with the holding of the Supreme Court, Arbitrator Kleinsorge refused to place a narrow construction on contract language. He concluded that the power to determine questions of contract construction entails “the authority to decide *any* questions concerning contract violations such as those in the present case, including the question of damages.” (33 LA 574, 585.)

The arbitrator in *Oregonian* also placed special import

in interpreting his powers on the fact that the contract contained no provision limiting his remedial powers. We underscore this point because no limitation appears in the agreement between the Employer and the Unions. See, *Newark Newsdealers Supply Co.*, 20 LA 476 (1953); and *Canadian General Electric Co.*, 18 LA 925 (1952) for the same result.

Arbitrator Hugh E. Sheridan in *Hoffman Beverage Co.*, 18 LA 869 (1952), awarded damages against a union upon the employer's claim of a no-strike clause violation. The arbitration and no-strike clauses were substantially the same in *Hoffman Beverage* as in the present case. This arbitration decision is also significant in that it is representative of the accepted view that not every work stoppage necessarily imposes liability upon the contracting union. The arbitrator assessed damages only after concluding that the two day walkout was not a spontaneous act of the employees and that they had been instigated and encouraged by the union shop steward.

Motor Haulage Co., 6 LA 720 (1947) was one of the earliest reported arbitration decisions which established the principle that union liability can only follow a factual determination of the extent of union responsibility for a work stoppage. In *Motor Haulage*, Arbitrator Hugh E. Sheridan ordered compensatory damages levied against the union for a two-day wildcat strike. The arbitrator cautioned, however, that the award must not be interpreted as sanctioning union liability for every work stoppage. The arbitrator's language could well be applied to the analysis of the issues of this litigation.

"* * * [the arbitrator] does not believe that this union, or any organization for that matter, be it a labor organization or otherwise, should be held strictly accountable for all the personal, unrelated, and unauthorized acts of its individual members. Such a

rule of accountability is not only unreasonable but also unenforceable as a practical and legal matter." (6 LA 720.)

The *Motor Haulage* decision was subsequently ordered enforced by a state appellate court in *Motor Haulage Co. v. Teamsters*, 7 LA 953 (N. Y. Sup. Ct., App. Div., 1947). The court held, in response to the union's charge that the arbitrator had exceeded his authority, that a court cannot set aside an arbitrator's award " * * * for mere errors of judgment either as to the law or as to the fact."

In the present case, we submit by refusing to order arbitration the trial court, in fact, was substituting its judgment "as to the law" and "as to the facts" for that of the arbitrator's.

We do not contend that the trial court need have made a final determination of an arbitrator's right to award damages in deciding the arbitrability issue. We do maintain, nevertheless, the court went beyond its authority in denying the defendants' motion to stay by prejudging an arbitrator's power to award damages for violation. Certainly, the arbitration decisions cited above are in themselves sufficient authority to require arbitration of the present dispute. These decisions demonstrate that the court should have granted the stay under the rule for determining arbitrability set down in *American Manufacturing*. Whatever personal view of the merits a court may take, the Supreme Court directed that "[d]oubts should be resolved in favor of coverage."

If the Supreme Court holds that regardless of arbitration practice, alleged breaches of no-strike clauses (or of certain types of no-strike clauses) remain within the exclusive province of courts to decide, then, in effect, a precedent has been established conferring upon courts special authority to impose their interpretation of arbi-

tration clauses and to define the boundaries of an arbitrator's remedial powers. Before such a decision is made it should be recognized that it is near impossible to draw a definitive line which would keep the judiciary separated from the substantive issues of special classes of labor disputes. We submit, however, that such a decision would vitiate the commitment of public policy to encouraging the growth of arbitration. If the court's main function is to enforce arbitration, then the burden of limiting the arbitrator's jurisdiction must shift from the judiciary to the parties. Parties to bargaining agreements should be made clearly aware that all disputes under their contract will be arbitrated unless they insert unambiguous language in the arbitration clause excluding from arbitration well defined claims which may be brought by either side under specified provisions of the agreement. In this regard, note the recent decision of the District Court for the Eastern District of Pennsylvania in *I. B. E. W. v. Westinghouse Electric Corp.*, 198 F. Supp. 817, (E. D. Pa., 1961) in which arbitration was ordered because the bargaining agreement contained no specific exclusionary language. Cf. *Couch v. Prescolite Mfg. Corp.*, 191 F. Supp. 737, (W. D. Ark., 1961), where the court's standard of arbitrability was whether the contract "clearly and unambiguously" expressed an intention to arbitrate. This issue has recently been discussed by Richard Givens, *Sec. 301 Arbitration and The No-Strike Clause*, 11 Lab. L. J. 1005 (1960). See also, Comment, *Arbitration of No-Strike Breaches*, 31 Ind. L. J. 473 (1955).

CONCLUSION.

For the reasons above stated, the decision of the District Court denying the defendants' Motion to Stay should be reversed, and the judgment of the Court of Appeals set aside, the case remanded, with instructions that the relief requested by the defendants be granted.

II.

THE DISTRICT COURT SHOULD HAVE STAYED THE ACTION BECAUSE THE ISSUES RAISED BY THE COMPLAINT ARE PENDING BEFORE ARBITRATION.

A. The Employer's Claim of Liability for Breach of the No-Strike Clause at Law Raises Common Issues of Fact and Contract Interpretation and Application Which Have Been Raised by the Grievances Submitted to Arbitration Protesting the Right of the Employer to Discipline the Individual Defendants for Allegedly Committing the Same Breach.

In the preceding sections we have reviewed the holdings of the courts below that the alleged breach of the no-strike clause by the International and Local is not subject to arbitration. In addition to the above holdings, both the District Court and the Court of Appeals held that the action should not be stayed until arbitration of the pending grievances protesting the Employer's disciplinary action against the Local Officials for alleged participation and instigation of the work stoppage. This second basis for staying the action bears distinct consideration.

Even if one assumed *arguendo* that an arbitrator could not consider the question of damages against the defendant unions for breach of the no-strike clause, that does not mean that the determination of the responsibility of a con-

tracting union, its officials and members, or the employer's employees is not subject to arbitration. If this were not the case, the anomalous situation could occur of an arbitrator finding that a union and its agents did not violate the contract while a court finding they did commit a violation. Yet, this could well be the effect of the trial court's ruling.

In this regard, *American Smelting & Refining Co. v. United Steelworkers*, 271 F. 2d 802 (C. A. 7, 1959), which had been before the Seventh Circuit prior to the subject action, is a case in point which bears witness to the wasted time which can be imposed on litigants and courts when arbitration is not allowed to take its due course in advance of court action. After extensive arguments in the trial court and the Court of Appeals, *American Smelting* was dismissed by the parties following an arbitrator's award. As in the present suit, *American Smelting* involved a suit by an employer for breach of a no-strike clause against the contracting labor organizations and the individual local union officials. The defendants sought a stay, as in the subject action, pending a determination by an arbitrator of the right of the company to discipline the union officials. The stay was not granted by the trial court. While on appeal from the trial judge's order denying the stay, the arbitration award was rendered. The Court of Appeals, at that juncture, declared the appeal moot. From point of fact, however, the action terminated upon the award.

We now have the advantage of hindsight that much time and effort could have been saved in *American Smelting* if the parties had simply exhausted the arbitration processes before considering litigation. We submit that the experience gained from *American Smelting* bears direct application to this action.

The dilemma imposed by the lower courts' decisions is

apparent after a brief analysis of the relevant contract provisions. The basis of the cause of action against the unions and the individual defendants, as set forth in the Complaint, is violation of Article III, Section 3(1), the no-strike clause of the agreement, which reads:

"Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages: (1) for any cause which is or may be the subject of a grievance under Article XXVI of this Agreement * * *." (Complaint, I, Par. 5, R. 10).

The scope of the meaning of "grievances" as defined in Article XXVI has been discussed earlier in this brief. As we have previously outlined, the remaining sections of Article XXVI outline a detail procedure, progressing in stages, for resolving disputes between the parties up to the final recourse of arbitration. (Agreement between the parties, pp. 31-35; R. 19.)

The detailed procedures for adjusting employee grievances culminating, if necessary, in arbitration are self-evident. The Employer's cause of action circumvents these procedures in that it weakens the authority of the arbitrator who will be selected to hear the *pending* grievances between the parties.

It is apparent from the Statement of Facts that the allegations of liability against the union and individual defendants raise the same issues of fact and law which have been brought to arbitration under Article XXVI of the agreement. A simple comparison of the issues involved in this litigation and the pending arbitration demonstrates the truth of this conclusion.

In the suit for damages against the International and Local set forth in par. 7 of Count I, the Employer alleges that the unions violated the no-strike clause of their agreement because " * * * their officers, committeemen, and other

duly authorized and acting agents, caused a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit * * *." (R. 9.)

In the suit for damages against the individuals contained in par. 2 of Count II, the Employer identifies the individual defendants as the committeemen of the Local and the agents of the International who are responsible for the unions' alleged liability as set out in Count I. (R. 9.) The Employer's allegation of individual liability against the Local Officials is based on the same alleged breach of the no-strike clause as set forth in Count I. The Employer states in Count II, par. 9, that the defendants, " * * * individually and as officers, committeemen and agents of the said labor organizations (the International and Local) fomented, assisted and participated in a strike or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit * * *." (R. 13.)

The same allegations of fact and liability contained in Counts I and II are repeated in Count III and are essential to the Employer's request for injunctive relief. (See Count III, par. 9(i), and par. 2 of the addendum to Count III, R. 16-18.)

A statement of the issues to be decided at arbitration was submitted to the trial court in the affidavit of the president of the Local. (R. 24.) The accuracy of the statement was not disputed by the Employer and is consistent with the affidavit of Sinclair Refining's industrial relations manager submitted subsequent to the Local president's statement. (R. 33.)

The affidavit of the Local president sets forth the issues required to be determined at the pending arbitration as follows:

"(a) The illegality of disciplinary action taken against the below-named individuals as officials of Local 7-210, for allegedly fomenting, assisting and par-

ticipating in a strike or work stoppage, on February 13-14, 1959: A. F. Schilling, Sherman Moore, Samuel M. Atkinson, Zoltan Cziperle, John Reitz, Joseph Bundeck, Charles Bainbridge, Mike Payer, Thomas F. Hicks, Dean Bainbridge, John J. Podraza, and Robert V. Dermody.

"(b) The illegality of the Company's action, as justified by the Company because of the aforesaid alleged illegal work stoppage, in restricting the activity, movements, and processing of grievances by members of the Grievance Committee of Local 7-210, pursuant to Article XXVI and other provisions of the aforesaid collective bargaining agreement."

The affidavit further stated that:

"The above-named individuals are the same named individuals who are parties defendant to a law suit filed by *Sinclair Refining Company versus Samuel M. Atkinson, et al.*, in the United States District Court for the Northern District of Indiana, Hammond Division.

"All the above-named individual defendants in the aforesaid lawsuit are members of the aforementioned Grievance Committee." (R. 24-25.)

The issue to be decided by arbitration is whether the Local Officials have in any way instigated or participated in the work stoppage in violation of their obligations under the bargaining agreement. This is the same issue raised by the allegations of the complaint.

An arbitrator is often called upon to decide the extent of responsibility, if any, of a local union officer for the occurrence of an unauthorized work stoppage. There has been uniform acceptance that this determination is the core of an arbitrator's task in reviewing the right of an employer to discipline an official for his alleged part in a work stoppage. A short resume of significant arbitration decisions which have passed on this discipline question will illustrate the complex factual issues which must be re-

solved and judged by an arbitrator in deciding whether a local official bears responsibility for a work stoppage.

In *Bamford Motor Coach Lines*, 32 LA 753 (1959), the arbitrator refused to uphold the discharge of a union representative who admittedly called employees off their jobs because of provocation by the employer in unjustly suspending a union official for attending to union business in violation of the agreement.

The arbitrator in *C. & D. Batteries, Inc.*, 16 LA 198 (1951), did not uphold discharge of union officers and stewards for a short-lived sitdown strike. The arbitrator failed to find sufficient evidence that the officials had instigated or encouraged the sitdown, although they did participate, along with the other employees, once it was under way.

The necessity for determining union officials' responsibility for a work stoppage is required in a review of all forms of disciplinary action, not only in discharge cases. The basic function of arbitration in this type of case was well stated by Arbitrator Harold M. Gilden in *Armour & Co.*, 8 LA 758 (1947). The Arbitrator held that local officials cannot be held individually liable and subject to discipline because they proved ineffectual in stopping a walkout:

"Union officials cannot be looked upon as guarantors that the contract will not be violated. They are not subject to punishment in instances where the rank and file do not follow their advice. They are readily differentiated from Management executives who can exert persuasive authority through the threat of discharge. In contrast, the only authority vested in Union officials is that which they derive from the membership." (8 LA 758, 771.)

Responsibility for a work stoppage cannot be determined by a set of clearly defined logical rules. In making their

decisions, arbitrators must bring to bear an expert knowledge of the operations of a company. He must understand the facts of existence between union and management representatives. He must appreciate the background of their relationship and what common problems they share. He must form a judgment as to the degree of control and leadership over the work force which must reasonably be met by local union leadership and the degree of responsible supervision which has been assumed by management. See *Inland Container Corp.*, 36 LA 954 (1961). Judicial recognition of the arbitrator's experience and skills is particularly called for in this type of controversy. The Supreme Court's admonition to trial courts in *Enterprise Wheel* to assure arbitrators their due prerogatives is undoubtedly fit here. The trial court should have stayed this action so as to allow the arbitrator's "informed judgment to bear in order to reach a fair solution of a problem."

The expertise required of an arbitrator to resolve the issues inherent in the dispute between the parties is illustrative of the Supreme Court's recognition of the necessity to strengthen the arbitrator's jurisdiction over labor disputes. In *Warrior* the Court underscored this recognition of the arbitrator's role in placing specific reliance upon two of the leading exponents of broad and flexible labor arbitration jurisdiction in referring to Archibald Cox's article, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482 (1959) and Harry Shulman's article, *Reason, Contract and Law in Labor Relations*, 68 Harv. L. Rev. 999 (1955) (363 U. S. 574, 578-9).

Cox forcibly stated the significance of the arbitrator's expertise to collective bargaining:

"The inclusion of an arbitration clause shows a desire to commit such questions to a tribunal with the specialized knowledge and experience necessary to perceive

the substance which lies beyond dictionary definitions; this may be implicit in the collection of ideas even though there is no single phrase or sentence in which it finds expression. *And surely no collective bargaining agreement contemplates elaborate proof of its industrial context first in the suit to compel arbitration and later in arbitration.*" (p. 1515.) (Emphasis added.)

B. The Trial Court's Denial of the Motion to Stay Was, In Effect, a Refusal in Advance To Enforce the Eventual Decisions in the Pending Arbitrations Between the Parties.

This brief has demonstrated that the matters which have been brought to arbitration are basically identical with those of the complaint.

We submit that a judge is bound to follow and enforce the arbitrator's determination of these issues in any court proceeding between the parties. A court must give credit to an arbitrator's findings even if the remedies sought at law are not identical with those in question at arbitration. The principle of "res judicata" of arbitration awards or "estoppel by fact" is a necessary requisite to court enforcement of arbitration awards established by *Lincoln Mills*.

The Second Circuit's opinion in *Engineers Ass'n. v. Sperry Gyroscope Co.*, 251 F. 2d 133 (C. A. 2, 1957), cert. den'd 356 U. S. 932 (1958), is a leading decision expressing the binding effect of an arbitrator's determination of issues of fact and contract interpretation and application. In a suit by a union for breach of a collective bargaining agreement by an employer the Court of Appeals ordered the litigation stayed pending arbitration. Although the relief sought at arbitration was not the same as in the complaint at law the court reasoned that it was only required to

find an identity of issues raised in the two forums. The reasoning of the Second Circuit in *Sperry Gyroscope* finds complete support in the later decisions of the Supreme Court from *Lincoln Mills* to *Enterprise Wheel*:

"* * * we have stated that after determining that the parties have entered into an arbitration agreement, the duty of the court is to determine whether *any* of the issues raised in the suit were within the reach of that agreement." (251 F. 2d 133, 137.)

See also *Refinery Employees v. Continental Oil Co.*, 268 F. 2d 477 (C. A. 5, 1959) cert. den'd 361 U. S. 896 (1959) in which the Fifth Circuit ordered specific performance of arbitration, although recognizing, rightly or wrongly, that the separate issues of damages could be subsequently brought to court based on the arbitrator's rulings on the issues of fact and law. Cf: The decision of the District Court for the Northern District of Indiana in *Petroleum Workers v. Standard Oil Co.*, 44 LRRM 2180 (N. D. Ind., 1959) in which the court ordered the arbitrator to take initial jurisdiction of a suit under Section 301 of Taft-Hartley. Foreshadowing the Supreme Court decisions a year later, the District Court did not attempt to determine the merits of the claim, but only decided that the issues raised in the complaint were arbitrable under the bargaining agreement between the parties. Cf: *Steelworkers v. Zweig & Sons*, 47 LRRM 2966 (N. D. Ind., 1961).

The court's responsibility to abide by and enforce an arbitrator's decision in all issues of law and fact is not a unique theory peculiar to the field of labor arbitration. This has been a basic precept of American Common Law since the Nineteenth Century. We see no reason why this established precedent should be weakened through a failure to apply it to the growing body of modern law governing labor disputes.

The fundamental concept of "res judicata" as applied to all forms of arbitration awards has been succinctly stated by Sturges, *On Commercial Arbitrations and Awards* (1930):

"It is universally accepted that a valid award can be pleaded in bar of an action *upon any matter which was submitted and determined by the award.*" (p. 613 f.n. 260) (Emphasis added.)

The author took particular note of the growth of arbitration law in the State of New York.

The Federal judiciary, having been directed by the Supreme Court to develop a body of federal common law over enforcement of labor arbitration agreements and awards, would do well to look towards the lengthy New York experience in the enforcement of commercial arbitration. A landmark New York decision strikingly illustrates the application of the principle of *res judicata* to arbitration decisions. In *Springs Cotton Mills v. Buster Boy Suit Co.*, 88 N. Y. S. 2d 295 (1949), aff'd, 300 N. Y. 586, 89 N. E. 2d 877 (1949), a wholesaler sued a manufacturer for failure to deliver the remainder of an order after the wholesaler had refused the first shipment claiming that it was defective and unusable. Prior to the suit the manufacturer had recovered through arbitration the purchase price of the goods which had been delivered to the wholesaler. The manufacturer interposed the arbitration award as an affirmative defense. Based on the arbitrator's findings of fact, the manufacturer argued that it had the right to treat the contract with the wholesaler as rescinded and, therefore, was not obligated to deliver the remainder of the original order. The court upheld the manufacturer's defense. The court found that the arbitration necessarily resolved the issues raised in the complaint at law, although the parties were in opposite positions:

"Since the arbitrators found that the material was of good quality, no damages may flow from the non-performance of a contract that had been cancelled by agreement between the parties." (88 N. Y. S. 2d 295, 299.)

In a recent decision the New York Courts have demonstrated the vitality of the *res judicata* principle developed under commercial arbitration as applied to labor disputes. *Nagle v. Brandenburg*, 30 LA 561, 183 N. Y. S. 2d 991 (Memo of Dec.) (1958), holds that an arbitration decision cannot be circumvented by a subsequent law suit which adds a conspiracy count to the misconduct unsuccessfully alleged before the arbitrator. This, in effect, is what the Employer is attempting by requiring the Local Officials to submit to two proceedings based on the charge that they had instigated and supported an unlawful work stoppage.

In *Nagle* an action by an employee was dismissed which charged conspiracy against his employer and union to deprive him of his employment. The defendants interposed an arbitrator's award which held that the employee had been discharged for cause. Although the arbitration had not directly involved the union, only the employee and employer, the court held that it was *res judicata* to the merits of the law suit. The court concluded:

"It is clear from the award and judgment thereon that the matters in issue upon the first cause of action have been adjudicated and nothing remains for trial." (30 LA 561.)

The main precept which is at the foundation of the defendant's argument in support of their motion to stay is that there is an inevitable relation between a court's duty to enforce arbitration awards and to stay an action pending arbitration of issues raised by the complaint at law. The logic of this relationship was precisely defined by the

Second Circuit through Judge Learned Hand in a case under the Federal Arbitration Act:

“* * * stay presupposes that the action shall not abate; and if it does not, it must go to judgment of one kind or another. If a defendant wins before the arbitrators, he must be able to clinch his victory by a judgment; on the other hand, having invoked arbitration, he must also abide the result, if he loses.” *Murray Oil Products Co. v. Mitsui and Co.*, 146 F. 2d 381, 383 (C. A. 2, 1944).

CONCLUSION.

For the reasons above stated, the decision of the District Court denying the defendants' Motion to Stay should be reversed, and the judgment of the Court of Appeals set aside, the case remanded, with instructions that the relief requested by the defendants be granted.

III.

THERE IS NO CAUSE OF ACTION AGAINST THE LOCAL OFFICIALS IN THEIR INDIVIDUAL CAPACITIES

A. There Exists No Federal Cause of Action Against the Local Officials in Their Individual Capacities.

The Employer contends that the Local Officials are jointly and severally liable, in tort, for conspiring to and causing the breach of 999 individual employment contracts by participating in and instigating a work stoppage in violation of the no-strike clause of the Agreement between the International and Local.

The Employer's contention that union officers can be held individually liable has been primarily founded on a theory first advanced in Amended Count II of the Complaint in this action, which the trial court had refused leave to file. (R.

56-59.) The original Count II sounded in tort and simply alleged that the Local Officials had conspired to and did, in fact, cause a breach of the Agreement. After the trial court dismissed the action, the Employer sought leave to modify the basis of the cause of action against the individuals, alleging that by causing a breach of a collective bargaining agreement, the Local Officials had precipitated the breach of an individual employment contract for every worker who may have engaged in the stoppage.

In overruling the trial court, the Court of Appeals appears to have accepted the theory advanced by the Employer in Amended Count II. The Seventh Circuit reasoned that each employee who may have participated in the work stoppage violated a personal contractual obligation not to do so. (R. 74.) Thus, the Court of Appeals concluded that each of the Local Officials, as any other employee breached his own employment contract if he participated in the stoppage. Continuing from this point, and drawing upon common law tort principles, the Court of Appeals held that the Local Officials could be found personally liable for “* * * malicious interference with or inducement of breach of a contract * * *” in their role as employees and not as agents of their organization. (R. 76.) The Seventh Circuit’s decision implies that whereas the Local Officials may not be third party tortfeasors in relation to their organization’s agreements, they are strangers to other employees’ individual contract commitments. (R. 76.)

Essential to the Employer’s theory is the proposition that a bargaining contract entered into by a union imposes personal civil liability for any individual in the bargaining unit who may participate in a breach of the collective agreement. We submit that such a proposition is unquestionably contrary to federal law and destructive of the purposes of collective bargaining which have been reinforced through

over twenty-five years of Congressional legislation. The trial court was not in error in dismissing Count II of the Complaint and thereby holding that only the defendant unions the contracting parties to the subject collective bargaining agreement, could be sued for an alleged breach. (R. 43-45.) We maintain that the reasons underlying the trial court's decision in dismissing Count II cannot be vitiated by the imaginary construction of 999 separate employment agreements.

There is no dispute that Section 301 of the Labor Management Relations Act allows neither a suit by or against an individual for breach of a collective bargaining contract. Under Section 301, the federal district courts have jurisdiction to entertain suits by or against labor organizations. In its first major decision under Section 301, the Supreme Court clearly held that the Court's power does not extend over individuals. *Westinghouse Employees v. Westinghouse Corp.*, 348 U. S. 437, 99 L. Ed. 510, 75 S. Ct. 488 (1955); See also *Morgan Drive-Away v. Teamsters*, 166 F. Supp. 885 (S. D. Ind., 1958) aff'd 268 F. 2d 871 (C. A. 7, 1959), cert. den'd 361 U. S. 896 (1959) for an application of the *Westinghouse* holding.

Following *Westinghouse*, added significance was given to Section 301 by the Supreme Court's holding in *Lincoln Mills*, in which the Court held that Congress meant the federal courts to fashion a body of substantive law in the enforcement of collective bargaining agreements. The Court, in so holding, interpreted the Congressional intent to create a positive and uniform federal policy for the enforcement of labor-management contracts. The Court rejected the idea that Section 301 was designed merely to make district courts alternative forums to state tribunals for the imposition of common law precepts over labor controversies. See Richard A. Givens, *Section 301, Arbitration and the No-*

Strike Clause. (Vol. 11 Labor L. J., p. 1005 (1960.) Comment, 62 Col. L. Rev. 364 (1962), commenting on the subject litigation.

B. Under the Holding of the Garmon and Dowd Decisions, Neither the State Courts of Indiana Nor the Federal Courts Under Diversity of Citizenship Jurisdiction Have Authority to Impose a Rule of Common Law Tort on the Defendant Union Officials for Their Alleged Participation In the Breach of a Collective Bargaining Agreement.

The trial court's jurisdiction over the Local Officials, in their individual capacities, is based on diversity of citizenship. Therefore, in considering whether tort liability can be imposed over these defendants, the District Court was required to place itself in the same position as an Indiana state court. *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, 58 S. Ct. 817 (1938). During the course of this litigation, the Supreme Court decided two major cases, which add significant weight to the conclusion that Sec. 301 preempts alternative state actions and remedies for breaches of collective bargaining agreements in interstate commerce. We submit that *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959); and *Charles Dowd Box Co. v. Courtney*, 49 LRRM 2619 (U. S. 1962), coming after this Court's decisions in *Westinghouse* and *Lincoln Mills*, directly support the trial court's finding that no common law action can lie against individual defendants for participating in the breach of their union's bargaining agreement.

In *Garmon* the Supreme Court held that a state court had no jurisdiction to award damages in tort to an employer for activity which might conflict with the juris-

diction of the National Labor Relations Board established by Congress.

The union, in *Garmon*, was accused of operating an unlawful picket line in violation of state common law. The Supreme Court held that the union's alleged conduct must first be considered by the N. L. R. B. since the activity may or may not constitute an unfair labor practice under federal law. The Court made it clear that the only requirement for withholding jurisdiction from state authorities is a determination that the labor controversy *might* come within the purview of federal authorities for adjudication.

The *Garmon* decision was not limited—it went beyond the necessary confines of the case. The entire emphasis of the decision was on the paramount importance which Congress has placed upon an integrated national labor policy. In the opening paragraphs of the decision, Justice Frankfurter, speaking for the Court, set the major theme of the Court's ruling. The language of the decision could well be applied to the present case:

“The case before us concerns one of the most teasing and frequently litigated areas of industrial relations, the multitude of activities regulated by * * * the National Labor Relations Act * * *. These broad provisions govern both protected ‘concerted activities’ and unfair labor practices. They regulate the vital, economic instruments of the strike and the picket line, and impinge on the clash of the still unsettled claims between employers and labor unions. The extent to which the variegated laws of the several States are displaced by a single, uniform, national rule has been a matter of frequent and recurring concern * * *.

“Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures

and attitudes towards labor controversies." (359 U. S. 236, 241-243.)

The precedent established by *Garmon*, directly supports the District Court's holding in the present case. The Supreme Court has established the principle that the states cannot exercise powers which, in any way, interfere with or are dual to the *substantive* provisions of the Taft-Hartley Act. The employer's action against the defendant unions under Section 301 requires the application of federal *substantive* law under Taft-Hartley. If the action against the Local Officials is allowed to stand, this Court would be sanctioning the development of a dual system of state court litigation over breaches of collective bargaining agreements.

There is no dispute between the parties that the substantive allegations of liability against the defendant unions under Section 301 are identical to the allegations in tort against the individual defendants. *If the Supreme Court foresaw the conflict between established state law and the jurisdiction of the N. L. R. B., how can opposition between the power of the federal courts and state bodies be encouraged by approval of the novel form of action against union officials which has been proposed by the Employer?*

We submit that the recent holding of this Court in *Dowd* is the logical corollary to *Garmon* and foreshadows the decision necessary in this action. In *Dowd* the Supreme Court held that the state courts have concurrent jurisdiction with federal courts over actions for breach of collective bargaining agreements. However, in so holding, this Court acknowledged that Section 301 was " * * * more than jurisdictional * * * that it authorizes federal courts to fashion from the policy of our national labor laws, a body of federal law for the enforcement of agreements within its ambit." (49 LRRM 2620) *Lincoln Mills*. The Court accepted the authority of a state tri-

bunal to hear the action, but recognized that the state would be “* * * enforcing rights created by federal law.” (49 LRRM 2621.) The Court’s opinion on this point is particularly pertinent to the present issues because the complaint for breach of contract initiated in the state trial court apparently made no reference to federal legislation. The Supreme Court’s decision indicates that Section 301, and resulting federal questions, was interjected for the first time by way of defense. The *Dowd* opinion, taken as a whole, demands the conclusion that a common law action arising out of a breach of a bargaining agreement requires the application of federal law under 301 by the state court.² See in accord: *Volunteer Electric Cooperative v. Gann*, 46 LRRM 3049 (Tenn. Ct. of App., 1960); *McCarroll v. Los Angeles County Dist. Council*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), cert. den’d 355 U. S. 932 (1958); *Commercial Can Corp. v. Teamsters*, 160 A. 2d 855 (N. J. App. Ct., 1960); and *Broadway-Hale Stores v. Retail Clerks*, 48 LRRM 2967 (Cal. Dist. Ct. of App., 1961). A recent decision by the District Court for the Eastern District of Arkansas in *Central Metal Products v. U. A. W.*, 195 F. Supp. 70 (E. D. Ark., 1961), anticipated the ruling in *Dowd*. An employer filed a suit for breach of contract against a union in a state court under local common law. The union petitioned for removal to the federal court and the employer’s request to remand for lack of a federal question was denied. Although the complaint did not recite federal law, the federal court assumed jurisdiction under Section 301, stating:

“* * * if [the] complaint, fairly construed, re-

2. We ask the Court to note that our brief, as respondents, was submitted in draft form to the Employer, as petitioner, pursuant to the Court’s directives, subsequent to the *Dowd* decision, but, prior to *Teamsters v. Lucas Flour Company*, 30 LW 4167 (1962). Therefore, we do not deem it appropriate to discuss *Lucas Flour* at length. We do believe, however, that the latter decision completely supports our analysis of *Dowd* and the application of both these decisions to the present issues.

veals that [a] cause of action raises a question of violation of a contract with a labor organization representing employees in an industry affecting commerce, as defined in the Taft-Hartley Act, where the plaintiff is, himself, an employer in such industry, then the action is removable although some of the particulars required for federal jurisdiction must be made plain in the petition for removal." (195 F. Supp. 70, 72.)

See also to same effect, *National Dairy Products v. Hef-fernan*, 195 F. Supp. 153 (E. D., N. Y., 1961).

C. A Valid Cause of Action Against the Local Officials Cannot Be Created by Substituting the Fiction of 999 Employment Contracts for the Collective Bargaining Agreement.

The Employer's theory of individual contracts, resulting from the bargaining agreement, is incompatible with the entire federal labor policy as interpreted and developed by the Supreme Court in its landmark cases since *Westinghouse*. We submit that if such a theory were accepted, the consequences which would flow, would be chaotic for the development of labor management relations. The growth of a uniform substantive law under Section 301, as envisioned in *Lincoln Mills* and *Dowd* would be impossible. Federal and state courts could be deprived of jurisdiction under 301, over disputes arising out of bargaining agreements by an employer bringing a so-called common-law action in a local state court against individual union members who are alleged to have been responsible for, or who had merely participated in an alleged contract violation. We do not quarrel with the contention that the relationship of members of a bargaining unit to their employer, are governed by the bargaining agreement entered into on their behalf by their union. We do

maintain, however, that the courts have universally recognized that there are certain rights and obligations in the agreement, which can only be understood in terms of the associative responsibility of the work force as members of their union organization. This understanding was basic to the Supreme Court's first major decision under Section 301 in *Westinghouse*. See for the same holding *Machinists v. Servel*, 268 F. 2d 692 (C. A. 7, 1959), cert. den'd, 361 U. S. 884 (1959).

Strictly speaking, the parties to the Agreement are the International and Local on the one hand, and Sinclair Refining Company on the other. The no-strike commitment in Article III of the Agreement is entered into by the Union, and in turn, the Employer agrees that there shall be no lockouts. (See Agreement, Article III, par. 1 and 2, R. 19.) See *NLRB v. Cummer-Graham Co.*, 279 F. 2d 757 (C. A. 5, 1960), in which the Fifth Circuit reasons that employees, individually, are not parties to a collective bargaining agreement unless specifically added in negotiations. See *Comment*, 62 Col. L. Rev., 364 (1962).

The fallacy in the Employer's argument of individual contracts is apparent upon a review of just some of the countless arbitration decisions dealing with local union officials' responsibility for participating in, or instigating, a work stoppage in violation of no-strike clause. If an employee breaches his personal employment contract, by participating in, or instigating a stoppage, then an employer surely should have the absolute right to terminate the employment relationship of any or all of the employees. However, it is an accepted premise in industrial relations that the extent of discipline up to and including discharge of an employee, is not a matter of personal contract, but subject to the grievance and arbitration provisions of the collective bargaining agreement. The arbitrator is usually called upon, in these in-

stances, to interpret and apply the bargaining agreement as it relates to each employee. Most agreements specifically limit the right of an employer to discipline employees. In every case, the arbitrator is called upon to determine whether the employee's conduct during a work stoppage warrants the discipline meted out by the employer. In addition to examining the employee's actions, the arbitrator will take cognizance of the conditions which might have precipitated the stoppage. The Court should note that the subject Agreement contains a typical disciplinary clause, qualifying the right of an employer to " * * * suspend or discharge for good and sufficient cause" and that " * * * such suspensions and discharges shall be subject to the grievance and arbitration clause * * * ." (Agreement, Article XXXI, R. 19.)

A typical example of an arbitrator passing upon the right of an employer to discipline a local official in connection with a work stoppage, is seen in a recently reported arbitration by Jesse S. Williams in *Todd Shipyards Corp.* 36 LA 333 (1961). The arbitrator refused to uphold a discharge of a union steward with twenty-one years' service with the employer for alleged instigation of a work stoppage. The arbitrator reduced the discharge to a temporary suspension, weighing heavily on the limited role played by the official and the fact that other employees who participated in the stoppage were not in any way disciplined. The significant function of equitable considerations is exemplified by a decision of Arbitrator John Perry Horlacher in *Kaye-Tex Mfg. Co.*, 36 LA 660 (1960). Although Arbitrator Horlacher upheld disciplinary suspensions of some of the strikers who participated in a wildcat work stoppage, he clearly accepted the principle that the discipline could only be sustained if it is meted out in a non-discriminatory fashion. The arbitrator held that this principle was valid, even though the bargaining agree-

ment gave the employer specific authority to discipline no-strike clause violators as the employer saw fit.

It is also the general view of arbitrators that employees, who are local union officials, do not assume individual contractual obligations any more than their fellow workers. This fact should not be confused with the fact that the extent of their culpability as employees, may be affected because of their leadership role. This point was succinctly stated in a recent decision by Arbitrator Samuel S. Kates in *Hooker Chemical Corp.*, 36 LA 857 (1961), in which the arbitrator upheld discharges for some employees, and reduced others to temporary suspensions, as a result of a work stoppage. Arbitrator Kates refused to discharge local officers merely because of their union position, stating:

"In the present case, the fact of holding office * * * has been taken into account by the arbitration board only to the extent that this fact would produce greater effect on the employees sought to be led or influenced by these officers in the wrongful acts which they were shown actually to have committed." (36 LA 857, 860.)

See one of the earliest reported decisions setting forth the above principles by Arbitrator Whitley McCoy in *Rheem Mfg. Co.*, 8 LA 85 (1947). Cf: Arbitrator McCoy in *Jones & Laughlin Steel Corp.*, 29 LA 644 (1957). Cf: Decisions of other arbitrators in *Bamford Motor Coach Lines*, 32 LA 753 (1959); *C. & D. Batteries, Inc.*, 16 LA 198 (1951); *Armour & Co.*, 8 LA 758 (1947); *Babcock & Wilcox Co.*, 29 LA 681 (1957); *Bethlehem Steel Co.*, 29 LA 635 (1957); and *International Harvester Co.*, 14 LA 986 (1950).

As an employer's action directed against an employee is subject to and channeled through the provisions of the bargaining agreement, so too are an employee's rights subject to the grievance and arbitration procedures of the agreement. According to the Employer's theory, an employee assumes personal contractual obligations by virtue of the

terms of the labor-management contract. If this were true, then an employee should have an unqualified right to resort to court action against his employer for breach of his personal employment contract. This is clearly not the case—if it were, development of the arbitration process would be near impossible. Cf: *J. I. Chase & Co. v. National Labor Relations Board*, 321 U. S. 332, 88 L. Ed. 762, 64 S. Ct. 576 (1944) in which the Supreme Court reasoned that the only strictly “individual” relationship between an employee in a bargaining unit and the employer is when the former is hired and leaves employment.

The Seventh Circuit in *Kosley v. Goldblatt Bros., Inc.*, 251 F. 2d 558 (C. A. 7, 1958) cert. den'd, 357 U. S. 904 (1958), rendered a leading decision which draws a definite line between collective and individual undertakings by virtue of bargaining agreements. The court upheld the right of a discharged employee to sue, as an individual, his employer for back wages. The employee was not attacking the propriety of the discharge or seeking reimbursement for lost wages as a result thereof. The employer-defendant maintained that the employee was required to resort to the grievance and arbitration procedure before suit. The court stated that if the claim arose out of a dispute which involved the basic undertakings of the union and employer pursuant to the bargaining agreement the defendants' argument would be accepted. However, the court held that the question of back wages in this instance was sufficiently divorced from a collective bargaining dispute. It is of the utmost significance that the court specifically referred to the no-strike, no-lockout clauses of the agreement and the arbitration machinery as fundamentally a union-management undertaking:

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tion between the parties. This provision follows an undertaking by the parties that there shall be no strikes, lockouts, stoppages or the use of any form of economic coercion by either party." (251 F. 2d 558, 560.)

Cf: *Owens v. Press Publishing Co.*, 20 N. J. 537, 120 A. 2d 442 (1956).

Consistent with the Seventh Circuit's holding in *Kosley* is the uniform authority that an employee does not have the absolute right to the use of the grievance and arbitration machinery of the bargaining agreement. The relationship of the Employer's claim for individual liability and the limitation of an individual's rights to process a grievance through the steps outlined in the contract was precisely set forth by the Wisconsin Circuit Court in *Fray v. Meat Cutters*, 32 LA 369 (Wis. Cir. Ct., 1959). In this case the state court dismissed a suit for damages by a union member against his local union for failing to process a grievance protesting his discharge against his former employer. The court held that the union member and his union were not divisible so that a suit between them could be maintained. The court emphasized the collective characteristics of the labor-management contract and the common purposes of the union and its membership:

"* * * when [the local union] acted, or failed to act, it was doing so for the mutual benefit of all of its members. The members are engaged in a joint enterprise * * *."

The necessity for limiting direct action by an individual member for the sake of organizational cohesiveness was realistically set forth by the Court of Appeals for the Sixth Circuit by its recent opinion in *Union News Co. v. Hildreth*, 295 F. 2d 658 (C. A. 6, 1961). The court sustained a dismissal of a suit by an employee, in his individual capacity, against the employer for discharge without just

cause in violation of the bargaining agreement. Prior to the commencement of the action, the union had concurred with the employer that the discharge was justified. In dismissing the action, the court quoted Archibald Cox in Vol. 69, Harv. L. Rev. 601, 657:

"In my judgment the interests of the individual will be better protected on the whole by first according legal recognition to the group interest in contract administration and then strengthening the representative's awareness of its moral and legal obligations to represent all employees fairly than by excluding the union in favor of an individual cause of action. Consequently, I would lean toward finding such an intention in an ambiguous agreement." (quoted at 295 F. 2d 658, 667.)

See *Parker v. Borock*, 148 N. E. 2d 324 (N. Y. Ct. of App., 1959); *In re Brettner*, 29 LA 345 (N. Y. Sup. Ct., 1957); *Arsenault v. General Electric Co.*, 29 LA 655 (Conn. Sup. Ct., 1957); and *Terrell v. Machinists Ass'n*, 150 Cal. App. 2d 24, 309 P. 2d 130 (1957), for the same result. Cf. *Ford Motor Co. v. Huffman*, 345 U. S. 330, 97 L. Ed 1048, 73 S. Ct. 681 (1953); *Lamon v. Georgia Southern & Florida Railway Co.*, 212 Ga. 63, 90 S. E. 2d 658 (1955).

D. The Garmon Decision Is Directly Applicable to the Suit Against the Individual Defendants In That Their Alleged Conduct May or May Not Be Protected Activity Under the Labor Management Relations Act.

In the preceding sections of this brief, we pointed to the impact of the *Garmon* decision as part of the growing doctrine of federal preemption over labor disputes encompassed by Congressional action. *Garmon* dealt with the specific instance of a conflict of jurisdiction between the NLRB and state courts. The Supreme Court ruled that the preemptive powers of the federal court had been

breached when the California state courts imposed civil liability against a union for picketing. The Supreme Court held that since the picketing *may* be protected or unprotected activity under Taft-Hartley, the state could not act until the issue was resolved by the appropriate federal authority. The defendants maintain that the broad principles of *Garmon* control this action because of the conflict between federal substantive law under Section 301 and state tort law. As an additional consideration, the defendants also contend, apart from the conflict with Section 301, that the action against the Local Officials as individuals conflicts with the NLRB's power to determine whether their action was protected or unprotected activity and the extent to which the Employer can single them out with responsibility for the work stoppage.

Inherent in the Employer's action against the Local Officials is the supposition that state courts, or federal courts under diversity jurisdiction, can be given primary authority to limit the right of a man to strike. The proposed Amended Count II to the Complaint is based on an alleged individual violation of an obligation not to strike which runs to every member of the bargaining unit.

The Court can certainly take judicial notice of the fundamental guarantee to a worker of his right to refuse to work under protest to his employer under Section 7 of the National Labor Relations Act. We submit that it is not the responsibility of the courts to determine at what point the exercise of this individual right is unprotected so as to sanction retaliatory actions against him.

The NLRB has consistently passed upon the right of an employer to discharge or otherwise discipline employees who are local union officials as an outgrowth of their conduct in the course of a work stoppage during the term of a no-strike clause. These NLRB decisions have generally

risen from one of two types of issues under Sections 7 and 8 of the National Labor Relations Act, *viz*: 1) Whether the work stoppage, itself, was protected activity because it was in response to a prior unfair labor practice committed by the employer; or 2) whether the employer has committed an unfair labor practice under Section 8 by disciplining employees who are local union officials for their alleged part in the stoppage.

The existence of NLRB jurisdiction over both types of issues conflicts with a common law tort action against the Local Officials under the rule of law established in *Garmon*. Under the standards unequivocally set down in *Garmon*, a court need only conclude that the action before it involves conduct which *might* be protected activity under the federal legislation. The heart of *Garmon* was the Court's conviction that potential conflict arising from the resolution of labor disputes between common law tort actions and the NLRB must be avoided in the interest of a developing national policy. The application of this principle to the action against the Local Officials is inescapable after a review of some of the disputes which are considered by the NLRB.

The landmark decision of the Supreme Court in *Mastro Plastics Corp. v. N. L. R. B.*, 350 U. S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956) is, in itself, sufficient authority for our position. The Court conclusively held that not every work stoppage by employees during the life of a no-strike agreement was unprotected activity under Section 7. The Court held that the NLRB could enforce unfair labor practice charges against an employer for taking retaliatory action against employees who had participated in a walkout contrary to the no-strike clause of the bargaining agreement. The NLRB had found that unfair conduct by the employer in precipitating the work stoppage prevented unfair discipline of the men who had participated in the stoppage.

Mastro reflects a long history of NLRB adjudication of the first type of issue set forth above. Cf: *Mine Workers and Westmoreland Coal Co.*, 117 NLRB 1072 (1957) rev'd. in part, 258 F. 2d 146 (CA, D. C., 1958); and *Mine Workers and Boone County Coal Corp.*, 117 NLRB 1095 (1957) rev'd. on other grounds, 257 F. 2d 211 (CA, D. C., 1958), in which the Board found in both cases that the union caused a strike in violation of a no-strike clause. Cf: decision of Kansas Supreme Court in *Local 774 v. Cessna Aircraft Co.*, 185 Kan. 183, 341 P. 2d 989 (1959), and Washington Superior Court in *Tacoma Union v. Puyallup Tribune*, 49 LRRM 2230 (1961). In *Mastro* the question before the Board was whether the work stoppage, in itself was protected activity. *Stockham Pipe Fittings Co.*, 84 NLRB 629 (1949), was one of the Board's first decisions dealing with the second kind of issue. In this case, the Board passed on the question whether an employer had committed an unfair labor practice by disciplining an employee, who was a local union officer, for allegedly instigating a work stoppage in violation of a no-strike clause. In the *Stockham Pipe* type of situation, the issue of the extent of a local official's responsibility for a stoppage must be passed upon by the Board in condoning or forbidding the employer's imposition of punishment against him.

A review of NLRB decisions just in the past year, demonstrates the vitality of the *Stockham Pipe* issue. In *General Motors Corp.*, 48 LRRM 1368 (1961) the Board held that the employer committed an unfair practice in discharging a local union committeeman for instigating a stoppage in violation of a no-strike clause. The Board found that although the committeeman engaged in the stoppage after it began, he did not, in fact, instigate or have any control over its beginning. The employer had not disciplined other employees who had participated in the stoppage, but had

singled out the committeeman for dismissal solely because of his local union position. The Board reasoned:

"The issue involves not only the right of [the committeeman] but of all other employees similarly situated to be free from employer discipline for their union activity." (48 LRRM 1368, 1369.)

Cf: Other NLRB recent decisions passing on the same issue as in *General Motors*; in some cases the Board finding employer disciplinary action against local officials justified and in others not: *Denver-Chicago Trucking Co.*, 48 LRRM 1524 (1961); *Russell Packing Co.*, 48 LRRM 1608 (1961); *Arlan's Department Store*, 48 LRRM 1731 (1961). Cf: Earlier decisions of the NLRB involving the same issue in *W. L. Mead, Inc.*, 113 NLRB 1040 (1955); *Plasti-Line, Inc.*, 44 LRRM 1148 (1959).

It may be argued that our position is inconsistent because we maintain, on the one hand, that tort actions cannot be allowed in contravention of NLRB jurisdiction, yet we do not disapprove parallel jurisdiction by arbitrators. The argument may be made that the reasons advanced why actions against individual defendants conflicts with Board jurisdiction are fundamentally the same as those made in Section I of this Brief that this action should have been stayed until the pending arbitrations between the parties over the discipline of the Local Officials has been held. In refutation, we submit that arbitration by agreement of the parties is truly a horse of a different color than a civil law tort action. We have already emphasized that Section 203(d) of the Labor Management Relations Act declares a Congressional policy in favor of resolving disputes under bargaining agreements "by a method agreed upon by the parties * * *." In light of Section 203(d) the NLRB, on its own initiative, has either stayed or dismissed proceedings before it in lieu of the mutual desires of the parties to resolve their differences by arbitration. We recom-

mend an excellent summary of the foregoing NLRB policy by Bernard Samoff, Chief Labor Management Relations Examiner for the Board in *The N. L. R. B. and Arbitration, Conflicting or Compatible Currents*, Vol. 9 Lab. L. J. 689 (1958).

The Court of Appeals for the Fifth Circuit has given judicial recognition to the Board policy on arbitration in *Machinists v. Cameron Iron Works*, 257 F. 2d 467 (C. A. 5, 1958), cert. denied, 358 U. S. 880 (1958). In this case a union petitioned a district court for specific performance of the arbitration clause of their bargaining agreement. The employer-defendant argued that because allegations of the Complaint involved issues which could be raised as unfair labor practice charges, the NLRB had sole jurisdiction of the matter in the first instance. The Fifth Circuit ordered specific performance in recognition of the NLRB policy favoring arbitration. See discussion of NLRB policy in *General Motors Corp.*, *supra*; and in decision by Arbitrator Harry J. Dworkin in *International Breweries*, 37 LA 639 (1961).

In upholding the right of action against the Local Officials, the Seventh Circuit in its opinion relied on *Baun v. Lumber and Saw Mills Workers Union*, 46 Wash. 2d 645, 284 P. 2d 275 (1955). (R. 76.) We submit that the rule of law employed by the state court in *Baun* cannot survive *Garmon*. The state court upheld the right of a plant superintendent to bring a tort action against local union officials for conspiring to deprive him of his position. The action did not involve breach of a collective bargaining agreement. The Court sustained the right, albeit the conduct alleged in the complaint against the officials could have been protected activity under Section 7 of the Labor Management Relations Act. Under the principles set down four years later in *Garmon* state courts today could not

entertain a lawsuit based on conduct which might be protected by federal law.

We recommend to the Court's attention, an article by Harry H. Wellington in Vol. 26 U. of Chicago L. Rev. 542 (1959) entitled *Labor and the Federal System*, which clearly states the necessity that civil suits arising from breach of collective bargaining agreements be kept within the confines of the rights of action created by Section 301 of Taft-Hartley. The author recognizes this requirement if the uniform labor policy created by Congress is to be effectuated. The article reasons that this conclusion is the logical synthesis of the rulings of the Supreme Court in *Lincoln Mills* and *Garmon*. Wellington first substantiates our understanding of the *Garmon* decision as it relates to individual liability for participation in union activity:

"* * * Congress has created a board to construe the federal statute in the first instance. Federal purpose demands exclusive primary jurisdiction in an expert body, the N. L. R. B. To allow a state court to make the initial determination of the federal question is to undercut this federal purpose, and it is a mistake to think that the availability of eventual—or perhaps potential * * *—Supreme Court review is a cure." (p. 551.)

The author went on to deal directly with the jurisdiction to determine whether a no-strike clause has been violated. The article emphasizes the conflict which will inevitably result if state courts are allowed to exercise their multifarious control over any form of strike activity:

"If state substantive law were to survive *Lincoln Mills*, some direct interference with Section 7 rights occasionally might occur. For example, suppose under state law a state court awards an employer damages, holding that a strike is in violation of an implied 'no-strike' provision in a contract. Suppose further that under federal law the 'no-strike' provision would not

have been implied, and that therefore, the strike was a protected activity under Section 7. If this sort of conflict were frequently to occur, it would be unfortunate indeed." (p. 557.)

Cf: Comment, Volume 58 Michigan L. Rev. 288 (1959) in which the author points out that the passage of the recent amendments to the Labor Management Relations Act by the 86th Congress did not in any way curtail the broad dictates of the *Garmon* decision. Cf. Comment Vol. 42 Minnesota L. Rev. 1139 (1958), in which the author supports the premise that a work stoppage during the term of a no-strike clause can entail or in itself be considered protected or unprotected activity or an unfair labor practice under Taft-Hartley.

E. There Is No Allegation of Tort Liability Against Any of the Defendants Other Than Their Alleged Instigation of and Participation In the Work Stoppage.

In order to avoid any confusion of issues on this appeal, the Employer at no time has alleged any " * * * torts, or conduct marked by violence and imminent threats to the public order * * *" against the defendant union officials. *Garmon*, 359 U. S. 236, 247. The Supreme Court in *Garmon* recognized that state courts still have jurisdiction over torts of violence which may be committed by individuals over and apart from their part in the collective activity involved in a labor controversy.

None of the three Counts of the Complaint or Amended Count II contain any allegations of violent torts against any of the defendants. (See, in particular Ct. I, para. 7, R. 11; Ct. II, para. 9, R. 13; Ct. III, para. 9, R. 14-15; and Amended Ct. II, para. 9, R. 56.) See Comment Vol. 35 St. John's L. Rev. 85 (1960); and Vol. 44 Va. L. Rev. 1337 (1958).

F. The Complaint Does Not Allege an Action in Tort Against the Local Officials Which Would Be Cognizable Under the Indiana Common Law.

Since the action against the Local Officials is based on diversity of citizenship, there is no dispute that the suit presupposes a right of action in tort according to the law of Indiana. We submit that the total impact of congressional action as interpreted and applied by Supreme Court decisions and NLRB policy which we have reviewed, demonstrate that the Employer's artfully created fiction of individual employment contracts cannot be made a creature of Indiana common law.

Individual contracts, if such did exist, would have to be a direct outgrowth of a collective bargaining relationship which has been given life and nourished by federal statutes. Whatever benefits and obligations the employees at Sinclair Refining Company derive by virtue of the International and its agents signing an agreement with their employer is the result of a chain of events initiated or sustained by federally created rights and obligations. The right of the International and Local to attempt to organize the workers at Sinclair was guaranteed by Section 7 of the Labor Management Relations Act; the Employer's obligation to recognize the union as the *exclusive* bargaining representative for certain defined categories of its employees was determined by the NLRB at a hearing, followed by an election conducted by the Board under Sections 3, 9, 10 of the Act; the obligation of the International and Local to represent *all* of the employees in the bargaining unit (regardless of any employee's personal desires to the contrary) is imposed by Section 8 of the Act; and the mutual obligation on the Employer and International and Local to sit down with each other and bar-

gain towards agreement was required under Section 8 of the Act. After all of these steps have been taken, we reach the Employer's contention that the State of Indiana has developed a common law action which recognizes individual employment contracts as the culmination of the aforesaid collective bargaining history.

The Employer's theory is particularly inappropriate as applied to the State of Indiana. Indiana is one of the nation's "right-to-work" states which has made it a criminal offense by statute for any person or organization to require union membership as a condition of employment. (Vol. 8, Part 1, Burns' Rev. Stat. Sec. 40-2701.) Under federal law, therefore, the International and Local are required to represent all employees in the bargaining unit regardless of whether they have chosen not to belong to the union. The Employer has not alleged in its Complaint who, if any, of the 999 alleged participants in the work stoppage were union members and who were not. Complaint, Count II, par. 9 (R. 13), Amended Count II, par. 9 (R. 57-58.) Presumably, from the Employer's point of view, individual contracts are imposed on the employees within the bargaining unit regardless of union membership. If this is the case, then surely the theory of liability could only have been gleaned from federal law.

A review of common law precedents supports our position that the District Court was correct in concluding that " * * * union members or officers cannot be held individually liable for acts of the union * * * ." (R. 44.) We respectfully submit that the Court of Appeals was in error in relying upon the tort doctrine of *Lumley v. Gye*, 2 El. and Bl. 216, 118 Eng. Reprint 749 (O. B. 1853) (R. 74). The law of malicious interference by a stranger with a third party's

contract is inappropriate to conduct among fellow workers and union members.³

In its Memorandum of Decision the District Court cited two decisions which demonstrate the application of accepted common law principles to the breach of a union agreement. *Hicks v. Haight*, 171 Misc. 151, 11 N. Y. S. 2d 912 (1939) clearly sets forth the common law rule. (Cited in Memorandum of Decision, R. 44.) The New York State courts have had a long history of passing upon the question of holding an agent liable in tort for breach of contract by the principal upon the theory that the agent induced the breach. The New York decisions are uniform in holding that no such cause of action exists under the American or the earlier English common law.

In *Hicks* "[t]he question presented is whether directors and officers of a corporation, acting in their representative capacity are to be held liable for procuring a breach of contract by the corporation." (11 N. Y. S. 2d 912, 916.) This is basically the same question which is presented by this appeal. *Hicks* bears even more directly on the present issues in that the decision passed upon defendants' motion to dismiss the complaint.

The New York court dismissed the action against the corporate agents in their individual capacities. The decision distinctly drew the line between contract and tort actions:

"The briefs do not refer to any case in which an attempt was made to hold the members of a directorate liable on that theory for having caused their corporation to breach its contract. Such an extension of the

3. We invite the Court's attention to an excellent discussion of the history of *Lumley v. Gye* as the doctrine of that decision was applied by American courts in the late 19th Century to the development of injunctions against organizing activities by the budding industrial labor organizations. Charles O. Gregory, *Labor and the Law* (2nd Rev. Ed., 1961 Norton) pp. 94-95 and 174 *et seq.*

doctrine would tend to leave the directors open to tort claims whenever the corporation failed to perform a contract. * * * But even were directors to be held liable for so conducting their corporation as to cause it to fail to perform its contract, it is probable that they would not be held personally liable where the promisee could enforce full satisfaction of a judgment obtained in an action against the corporation for breach of contract." (11 N. Y. S. 2d 912, 916.)

The reasoning of the New York court starts with the elementary principle that an agent does not assume personal responsibility for a contract entered into by his disclosed principal or by him on behalf of his disclosed principal. *Williston on Contracts*, Rev. Ed. 281, I, 826; *Restatement of Agency*, Sec. 320; and Vol. 3, C. J. S., *Agency*, Sec. 215. The state court's analysis demonstrates not only that there is no tort action against union agents but the conflict of such an action with Section 301. The unions, as corporations, have no independent life aside from the officials, agents and members which compose the organization. If a union is to be charged with breach of contract, it can only be done so by acts committed by the officials, agents and members, as a breach of contract by a corporation is committed by its officials, agents and members. See Sec. 26 ALR 2d 1270 for a summary of the principles set forth in the *Hicks* case; and a comment in 43 Cornell L. Quarterly 55 (1957) entitled *Liability for Inducing a Corporation to Breach Its Contract*.

A recent decision by a New York court reaffirms that union and corporate officials are mirror images of each other in the eyes of the common law. *In re Rosenblum*, 36 LA 946 (N. Y. Sup. Ct., 1961.) A union brought an action against the president of a small, closely held corporation seeking the court to order the defendant to arbitrate a dispute under their collective bargaining agreement. The

court dismissed the action on the basis that the individual defendant could not be held personally responsible for the commitments of his corporate organization. The court's summary of the common law as it relates to collective bargaining is quite pertinent:

"Where there is a disclosed principal-agent relationship and the contract relates to a matter of the agency, the agent will not be personally bound unless there is clear and explicit evidence of the agent's intention to substitute or superadd his personal liability for, or to, that of his principal.

"The fact that [the defendant] might have been aware of the lack of protection afforded to the workers by an agreement signed only by the corporation does not estop him from asserting the claim that he is not personally bound by the arbitration agreement." (36 LA 946, 947.)

Cf: *Mencher v. Weiss*, 306 N. Y. 1 (1953) where the court, applying the same principles as in *Rosenblum* found that the collective bargaining agreement did explicitly spell out a commitment by the officers of the corporation to bind themselves personally. This was an action by a union for unpaid health and welfare payments from an insolvent business.

During the course of arguments in the trial court the defendants' position received forceful affirmation by a decision of the District Court for Iowa in *Wilson and Co. v. United Packinghouse Workers*, 181 F. Supp. 809 (D. C. Iowa, 1960.) This decision was cited by the trial judge in its Memorandum of Decision (R. 49) and crystallizes the relationship between common law principles and suits for breach of collective agreements under Section 301.

The Court in *Wilson* held that a common law action against twenty-four local union officials for their active instigation of and participation in a work stoppage in violation of a no-strike clause circumvents the exclusive

remedy for breach of collective bargaining agreements under federal law. The suit against the individuals had been joined in an action against the international and local unions under Section 301.

The District Court in *Wilson* held that there was no substantive distinction between the so-called "tort" action against individual officials and a suit for breach of a bargaining agreement under Section 301. The Court stated:

*"[The employer] alleges that the acts complained of were done pursuant to conspiracy. Technically speaking, there is no civil action for conspiracy. * * * allegations that the tortious acts complained of were committed pursuant to a conspiracy neither add to nor detract from a complaint in a civil action. * * * it is not the conspiracy, but the wrongful acts causing damage which are civilly actionable."* (181 F. Supp. 809, 819-20.) (Emphasis added.)

We submit that the Seventh Circuit's distinguishing of *Wilson* is not justified. The Court of Appeals' opinion suggests that there is no reason to dismiss the action against the individuals until the allegations that they caused the work stoppage are proved or rejected. (R. 75-76.) This position presumes acceptance of the Employer's basic thesis that the Local Officials can be held personally liable for breach of the no-strike clause. The fact of the matter is that if the Local Officials did not instigate the stoppage as agents of the International or Local, their principals stand liable under the allegations of Count I of the Complaint.

The *Hicks* and *Wilson* decisions are consistent with established common-law precedent.

Wilson's synthesis of the common law and Section 301 was foreshadowed by the Court of Appeals for the Fourth Circuit in *Friendly Society of Engravers and Sketch-makers v. Calico Engraving Co.*, 238 F. 2d 521 (C. A. 4,

1956) cert. denied 353 U. S. 935 (1957), decided before *Lincoln Mills* and *Garmon*. In this case a union brought an action sounding in tort against an employer for malicious interference with the collective bargaining agreement by encouraging employees to overthrow the union as their bargaining representative. The Court held that there was no recognizable cause of action in tort for "malicious interference" with an agreement by a party to the agreement. The Court went on to hold, as in *Wilson*, that the union's only action against the defendant must be brought under Section 301 since "[t]he National Labor Relations Act and the Labor Management Relations Act * * * provide exclusive remedies for the protection of the rights thus recognized." (238 F. 2d 521, 523.) In accord, see *National Warehouse Corp. v. Ranney*, 44 LRRM 2923 (Wis. Cir. Ct., 1959), and *Thayer Co. v. Binnall*) 82 F. Supp. 566 (D. C. Mass., 1949). *We are unable to find any precedent under Indiana law which supports the conclusion that an agent can be held responsible in tort for the breach of a contract of his principal.* Our position is borne out by the decision of the Court of Appeals for the Seventh Circuit in *McNamar v. Baltimore & Ohio Chicago Terminal R. R. Co.*, 254 F. 2d 717 (C. A. 7, 1958), in which the Court assumed that under Indiana law that one who maliciously interferes with a contract must be a third-party stranger to the contractual relations before a tort action can be sustained against him.

Cases in which an agent or officer of a corporation have been held individually liable in tort are based on a charge and finding of predatory acts for the defendant's self-interest. These decisions were rendered only after a showing that the agent's action in causing destruction of his principal's contract were motivated out of purely personal gains in opposition to his firm. Cf. *W. P. Iverson & Co. v. Dunham Mfg. Co.*, 18 Ill. App. 2d 404, 152 N. E. 2d 615

(1950); *Wade v. Culp*, 107 Ind. App. 503, 23 N. E. 2d 615 (1939), cited in Seventh Circuit's opinion. (R. 74.) It is apparent from Count I of the Complaint that the alleged liability of the International and Local is based on actions by the union officials on behalf of their principal—organization.

CONCLUSION.

The Petitioners respectfully urge that the Decision of the District Court dismissing Count II of the Complaint in this action be affirmed and the Judgment of the Court of Appeals be set aside.

RESPONDENTS' ARGUMENT IN CASE NO. 434.

IV.**THE DISTRICT COURT WAS NOT IN ERROR IN DISMISSING THE ACTION FOR AN INJUNCTION.****A. An Injunction Covering Possible Labor Disputes In the Future Would Be In Violation of the Federal Anti-Injunction Legislation.**

In Count III of the Complaint, the Employer sought a permanent injunction operating only *in futuro* against the International; the Local; and the Local Officials, in their individual capacities; and all present and future members of the bargaining unit at the Employer's East Chicago refinery from in any way interfering with normal employment or production in connection with any dispute which might be subject to the grievance and arbitration provisions of any future collective bargaining agreement between the Employer and the Unions. (R. 17-18.)

In addition to the allegations of the first two counts of the Complaint, the Employer alleged in Count III incidents dating back to July 1, 1957, which are said to all have amounted to violations of the no-strike clause of the then current bargaining agreement. (R. 15-16.) The Employer's allegations must be read in light of the uncontroverted affidavit of the Local President which was received by the trial court. (R. 24.) The Local President's affidavit verified that practically all of the disputes alleged in Count III have been settled by the Employer and the Local through their grievance and arbitration machinery, and that the remaining elements of conflict are in the process of settlement or resolution through the same mechanism.

Federal court jurisdiction over Count III was invoked against the Local Officials under diversity of citizenship and against the International and Local pursuant to Section 301. Insofar as the injunction suit asserts a separate cause of action against the Local Officials, the preceding arguments relative to Count II of the Complaint apply with equal force to Count III. However, aside from the questions already considered in this brief, Count III presents new issues of far reaching seriousness.

The overriding issue presented by Count III, is whether Section 301 of the Labor Management Relations Act has granted the federal courts power to anticipate and enjoin possible future conduct in connection with labor disputes which may arise under bargaining agreements not yet negotiated. We submit that no such grant of authority can be read by implication into Section 301 so as to circumvent or to effect a partial repeal of the federal anti-injunction legislation.

Since 1914 and the passage of the Clayton Act, 38 Stat. 738, 29 USC, Sec. 52, it has been the policy of the national government that no federal court shall cause an injunction to issue in any labor dispute. The Clayton Act specifically provides that no restraining order may issue prohibiting the right of persons, "** * * singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do* * * *" (29 U. S. C. Sec. 52) (Emphasis added). The broad principle established in Clayton was expanded and reinforced in the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Sec. 101, so that the prohibition against injunctions was extended to all forms of labor disputes, including those between a union organization and employer. The Employer seeks to supplant this entrenched Congressional policy through judicial fiat.

This Court is keenly aware of the existing conflict between the Courts of Appeal as to whether the Clayton and Norris-LaGuardia prohibitions extend to work stoppages *in progress* which are alleged to be in violation of a bargaining agreement. The Tenth Circuit in *Chauffeurs, Teamsters and Helpers v. Yellow Transit Lines*, 282 F. 2d 345 (1960), cert. granted 364 U. S. 931 (1961), affirmed an injunction by a district court against continuing picketing by a union, which activity was found to be in violation of a current no-strike provision. The Tenth Circuit reasoned that the right to issue the injunction was implicit in Section 301, and therefore, beyond the purview of Norris-LaGuardia. The *Yellow Transit* decision is directly contrary to the ruling of the Second Circuit in *A. H. Bull Steamship Co. v. Seafarers' International Union*, 250 F. 2d 326 (1957) cert. den. 355 U. S. 932 (1958). The Second Circuit held that Norris-LaGuardia forbade the issuance of an injunction against a *pending* work stoppage which the employer had alleged to be in violation of a no-strike provision.

Conflicting decisions of the Tenth and Second Circuits have squarely raised the issue whether an on-going work stoppage during the term of a no-strike clause of a current bargaining agreement is (1) a "labor dispute" under the anti-injunction legislation and if so, (2) whether Section 301 has repealed the coverage of the earlier legislation. There is no question that these issues are of vital importance to this case. If *Bull Steamship* is controlling, then we are automatically vindicated. On the other hand, if *Yellow Transit* is affirmed, then the present dispute still demands resolution. *The Court should bear in mind that there has been no decision by any court, nor any reputable authority that would extend a judge's power to issue a permanent injunction over undetermined possible work stoppages in the future.*

B. The Courts Below Were Correct In Holding That Refusals to Perform Work During the Term of a Bargaining Agreement Remain Within the Purview of Prior Anti-Injunction Legislation.

Both the district court and the Seventh Circuit relied upon the broad holding of *Bull Steamship* in upholding the motion to dismiss Count III of the Complaint. In thus ruling, the courts below did not have to meet the question whether an injunction operating only over future conduct is distinguishable from the type of injunction in *Yellow Transit*, which was directed at only a pending work stoppage. We do not propose to extensively re-argue the *Yellow Transit* issue since it has already been exhaustively reviewed by this Court. The Court should note, however, that the Employer's brief in the present litigation rests solely on the issue presented in *Yellow Transit* and completely disregards the fact that no work stoppage was ever pending during the course of this suit. The Employer completely merges injunctions over current activity with injunctions operating over possible future conduct. The Employer reasons that *Norris-LaGuardia* was never designed to cover any disputes during the term of collective bargaining agreements and, therefore, as Section 301 should sanction an injunction in the *Yellow Transit* type of situation, an injunction should necessarily be allowed here. In light of the decisions below, and the Employer's argument, we first desire to add our support to the holding of the Seventh Circuit and the principles established in *Bull Steamship* before reaching the issues peculiar to this controversy.

The Employer has built its argument on the theory that there was no federal litigation concerning work stoppages during the term of bargaining agreements prior to the passage of the *Norris-LaGuardia* Act. The Employer rea-

sons, therefore, that Congress could not have had in mind such situations in forbidding injunctions in "labor disputes" by federal judges. Although the Employer can find no relevant legislative history surrounding the passage of Norris-LaGuardia, heavy reliance is placed upon the supposed absence of litigation prior to the passage of the Act. Presumably, this argument is based on the accepted historical fact that Norris-LaGuardia was the culmination of a ground swell of feeling to end, once and for all, the intervention of the courts in labor disputes through the unpredicated and sometimes summary use of the injunction.

Two significant Court of Appeals' opinions from the First and Eighth Circuit decided during the interim between Clayton and Norris-LaGuardia strikingly weaken the Employer's position. The First Circuit had the opportunity of construing the Clayton Act's relevancy to an employer's action for an injunction against a threatened strike which was alleged to be in violation of the arbitration provisions of a current collective bargaining agreement. In *Foss v. Portland Terminal Co.*, 287 F. 33 (C. A. 1, 1923) the plaintiff-employer maintained that Clayton's prohibition against injunctions in "employer-employees" controversies did not extend to work stoppages in contravention of a bargaining agreement. The court refused the injunction, relying upon what it felt to be a clear direction from Congress:

"If it be assumed that the action taken by the defendants in their vote of July 14, if carried out, would be a breach of their contract to confer and to arbitrate their differences, it does not follow that the complainant is entitled to injunctive relief. There can be no doubt that this is a case between an employer and its employees involving a dispute concerning terms or conditions of employment. * * *" (287 F. 33, 36.)

B. The Courts Below Were Correct In Holding That Refusals to Perform Work During the Term of a Bargaining Agreement Remain Within the Purview of Prior Anti-Injunction Legislation.

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In *Kinlock Telephone Co. v. Local Union No. 2*, 275 F. 241 (C. A. 8, 1921), cert. den'd 257 U. S. 662 (1921), the Eighth Circuit issued a contrary ruling. The court sanctioned an injunction against an attempted strike by a union to obtain a union shop during the life of a bargaining agreement providing for arbitration of disputes. In reasoning similar to the Employer's position regarding individual liability in Count II of the subject complaint, the Eighth Circuit in 1921 stated:

"[W]hile anyone may quit their employment even though a contract exists, yet, they may not peacefully persuade others to break their contracts in order to gain their ends. * * * The appellees, who were not employees of appellants, persuaded some of the employees under contract to break the same, were attempting to persuade others to do likewise. * * *" (275 F. 241, 248.)

The *Foss* and *Kinlock* cases both support the conclusion that it is unreasonable to exclude the present controversy from the general category of "labor disputes" covered by Norris-LaGuardia. It was this kind of confusion in the application of Clayton that Congress meant to eradicate. This was one of the major theses of the classic work on labor injunctions by Frankfurter and Greene. In fact, both the *Foss* and *Kinlock* decisions were noted by the authors in a list of significant federal court decisions following the enactment of Clayton demonstrating the variegated policies of the judges. See Frankfurter and Greene, *The Labor Injunction* (1930), Appendix I, No. 41 and 53.

Norris-LaGuardia did not attempt to resolve most of the pre-existing conflict among the courts by establishing what union activity was "lawful" and "unlawful". Congress simply withdrew the injunctive remedy from the federal courts regardless of how peaceful labor activity was characterized. Alleged contract breaches, as well as

common law torts, may arguably have remained "unlawful", but beyond the reach of an injunction. The historic role of Norris-LaGuardia was succinctly summarized by Professor Charles O. Gregory in *Labor and the Law* (1961 Ed.) at page 190:

"Congress did not give organized labor a complete carte blanche as far as its economic activities were concerned. These activities, in such an economic context, it declared, should not be subject to the injunctive powers of federal courts. From this it may be implied that they were still subject to other legal procedures such as criminal proceedings and actions for damages, when appropriate."

The history of federal labor legislation since Norris-LaGuardia has been characterized by the specific "legalization" or "protection" of various forms of labor activity; or control of such activity; or the declaration that such activity is illegal or an "unfair labor practice" and thereby subject to mandatory control directly by the federal courts or through the National Labor Relations Board. We submit that there is no reasonable justification for concluding that Congress has taken any such action over work stoppages during the term of no-strike clauses of bargaining agreements.

The Tenth Circuit in *Yellow Transit* cited the Supreme Court's decision in *Lincoln Mills* for authority that Section 301 of the Labor Management Relations Act withdrew any protection of Norris-LaGuardia for breaches of bargaining agreements. The Tenth Circuit reasoned that since *Lincoln Mills* sanctioned specific performance of arbitration commitments, the prohibitions against injunctions directed toward work stoppages during the life of such commitments must be considered lifted. We submit that *Yellow Transit's* interpretation and application of *Lincoln Mills* is incompatible with better reasoned authority.

We submit that the courts below placed correct reliance on the dictates of the Supreme Court in *Railroad Telegraphers v. Chicago & Northwestern R. Co.*, 362 U. S. 330, 4 L. Ed. 2d 774, 80 S. Ct. 761 (1960.) (Memorandum of Decision, District Court, R. 45; Opinion Court of Appeals, R. 77.) The basic teaching of *Railroad Telegraphers* is that it is not within a court's prerogative to impose limitations on an established policy of Congress. In that case the Supreme Court held that a district court could not issue an injunction against a strike under the Railway Labor Act, 48 Stat. 1185, 45 USC Sec. 151. The Court held that Norris-LaGuardia removed the possibility of use of injunctive powers in any labor dispute without a specific mandate to the contrary from Congress. The railroad argued that the strike was in violation of the collective bargaining procedures and therefore beyond the protection of Norris-LaGuardia. The Supreme Court first found that the plaintiff had not stated a valid cause of action because the strike was not in violation of the union's obligation to bargain. Nevertheless, it is extremely significant that the Court believed it necessary to hold that regardless of the merits of the railroad's contentions, the remedy of injunction was not within the federal court's powers to grant. The decision of the Supreme Court underscored the fact that Congress alone has authority to limit the scope of Norris-LaGuardia:

"Section 4 of the Norris-LaGuardia Act specifically withdraws jurisdiction from a district court to prohibit any person or persons from 'ceasing or refusing to perform any work or to remain in any relation of employment.'

"In any case involving or growing out of any labor dispute 'as herein defined' * * * unless the literal language of this definition is to be ignored it squarely covers this controversy. Congress made the definition broad because it wanted to be broad. There are few

pieces of legislation where the Congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted." (362 U. S. 330 at 335.)

The Employer relies upon an earlier decision of the Supreme Court in *Brotherhood v. Chicago River & Indiana R. Co.*, 353 U. S. 30, 1 L. Ed. 2d 622, 77 S. Ct. 635 (1957). In that case, the Court upheld an injunction against violation of the adjustment procedures spelled out in the Railway Labor Act for settling "minor disputes." Decided in the same session as *Lincoln Mills*, the Supreme Court in *Chicago River* was very definite, however, that its decision was not to be construed as endorsing any limitation upon Norris-LaGuardia. The Court followed the detailed and unambiguous provisions of the Railway Labor Act in finding that Congress had intended in a specific type of railway dispute that certain procedures of the Act were to be exclusive. The Court stated:

"The Brotherhood has cited several cases in which it has been held that the Norris-LaGuardia Act ban on federal injunctions is not lifted because the conduct of the union is unlawful under some other statute. We believe that these are inapposite to this case. None involved the need to accommodate two statutes, when both were adopted as a part of a pattern of labor legislation." (353 U. S. 30, 42.)

Chicago River, in light of subsequent decisions, has been understood by authorities as a holding limited to the precise language of the Railroad Labor Act. This understanding of the Supreme Court's ruling has been reinforced by a recent decision of the Ninth Circuit in *Butte Anaconda Ry. v. Brotherhood of Firemen*, 268 F. 2d 54 (C. A. 9, 1959). The Ninth Circuit cited *Chicago River* in holding that the Railway Labor Act does not override the prohibition of the Norris-LaGuardia Act against the issuance of injunc-

tions in railway disputes. The court drew a sharp distinction between "minor" disputes under the Act, with its detailed procedures for settlement, and the general provisions of the Act relating to "major" disputes. *Chicago River* demonstrates that unless there is clear evidence supporting repeal, the basic policy of the federal anti-injunction acts controls.

A recent article in the Yale Law Journal pointedly summarized the distinction between the Court's construction of the Railway Labor Act and, what the author believes, a misapplication of Section 301 in *Yellow Transit*:

"* * * *Chicago River* and *Yellow Transit* are not two of a kind. The legal history of the 1934 amendments of the RLA indicates that its draftsmen gave no thought to the provisions of Norris-LaGuardia enacted two years before. In contrast, both the legislative history and final text of the LMRA are replete with references to the power of the courts to issue injunctions notwithstanding the prohibitions of Norris-LaGuardia." Comment, *Statutory and Contractual Restrictions On The Right To Strike During The Term Of A Collective Bargaining Agreement*, 70 Yale L. J. 1366, 1398 (1961).

The legislative history surrounding the Labor Management Relations Act is completely consistent with our position that Norris-LaGuardia does cover the present controversy and the prohibitions contained in that act have not been repealed by Section 301. The relationship of the two acts, from the point of legislative history, has been underscored by several legal commentaries since the issue has been raised in the cases before this Court. The Nebraska Law Review made this observation in commenting on *Yellow Transit*:

"In this situation, the only federal law that was being carried out and fashioned from our national labor laws was the Taft-Hartley Act itself. But when the problem of a no-strike clause is considered then certainly the

Norris-LaGuardia Act cannot be dismissed so easily. While Congress may not have legislated in Norris-LaGuardia as to arbitration, it does seem that it specifically legislated with respect to strikes in that Act." Comment, *Federal Court Injunction Against Breach of No-Strike Clause*, 40 Neb. L. Rev. 534, 538 (1961).

The Nebraska Law Review comment is particularly significant in that the author is sympathetic to *Yellow Transit* from his conception of social policy, yet still believes that action must necessarily come from Congress and not the courts.

The same point is made in the Yale Law Journal comment, cited above:

"But in limiting the application of Norris-LaGuardia, *Yellow Transit* cannot be grouped with *Lincoln Mills* and *Steelworkers* where orders to arbitrate were issued, for Norris-LaGuardia clearly encourages recourse to the arbitration process. Furthermore, there is evidence that the framers of Taft-Hartley, though rendering Norris-LaGuardia inapplicable in several instances to avoid conflict with the directives of the LMRA, purposely deleted from the committee draft of Section 301 a provision withdrawing Norris-LaGuardia from the area of contract enforcement. Thus, the argument raised by *Yellow Transit* cannot be reconciled with the legislative history and express language of Norris-LaGuardia." 70 Yale L. J. 1366, 1397-8 (1961).

The official legislative history of Section 301 coincides with the analysis of the law reviews. The bill as proposed by the House of Representatives specifically exempted the coverage of Norris-LaGuardia from suits for violations of collective bargaining agreements. The Senate rejected the House's proposal and the joint conference agreement eliminated that part of the House Bill. See *U. S. Code and Congressional Service*, First Sess. 80th Cong. pp. 1172-1173

(1947). The House proposal was the result of open and heated debate. Congressmen were fully aware of the implications of prior anti-injunction legislation to Section 301 and the serious effects of their decision to exclude Norris-LaGuardia. Remarks of Congressman Marcantonio at the culmination of one of the debates, reflects the heat of argument:

“Section 302(e) provides that the Norris-LaGuardia Act shall have no application in actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees. The proponents of this legislation are not satisfied to open up the Federal courts to innumerable suits for breach of contract, they must also provide that an alert employer can secure an injunction before the breach occurs.” (*Vol. 93 Cong. Rec., 80th Cong. 1st Sess., Part III (1947).*)

In the federal decisions since the enactment of Section 301, *Yellow Transit* stands practically alone for the proposition that Congress intended to remove Norris-LaGuardia from labor disputes under bargaining agreements. *Yellow Transit's* reliance upon *Lincoln Mills* is at odds with clear Congressional history and the reasoning of most federal judges.

The Second Circuit in *Bull Steamship* specifically dealt with the Supreme Court's holding in *Lincoln Mills* that Norris-LaGuardia did not prevent specific performance of an arbitration clause of a bargaining agreement. In reference to *Lincoln Mills* the Court stated:

“But this case does not say that Sec. 301 authorizes federal courts to issue injunctions when that remedy is clearly prohibited by the Norris-LaGuardia Act. The Court does hold, after an analysis of legislative history, to reach the conclusion just quoted, that the issuance of an order compelling arbitration was not prohibited by the Norris-LaGuardia Act * * *. Indeed

the Court found that *Sec. 8, 29 U. S. C. Sec. 108*, indicates a congressional policy favoring the settlement of labor disputes by arbitration." (250 F. 2d 326, 329.)

Bull Steamship is completely consistent with the Second Circuit's earlier holding in *Signal-Stat v. U. E.*, 235 F. 2d 298 (C. A. 2, 1956). That case is the leading authority for the defendants' position in their Respondents' Brief in this action that an alleged breach of a no-strike clause is an arbitrable issue under a bargaining agreement. (See Brief, p. 32, *supra*.) The Second Circuit has recognized the dangerous intrusion by the judiciary into legislative policy if it is to use injunction powers to interfere with a method of settling labor disputes. We recommend for the Court's analysis an exhaustive study of Section 301 and the federal anti-injunction acts in Vol. 70 Yale L. J. 70 (1960) entitled, *Labor Injunctions and Judge-Made Labor Law: The Contemporary Role of Norris-LaGuardia*.

Bull Steamship recognized that the Supreme Court in *Lincoln Mills* made certain that its decision be limited to specific performance of arbitration commitments. The Court did not hold that Section 301 had placed limitations on Norris-LaGuardia:

"The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed. Section 8 of the Norris-LaGuardia Act does, indeed, indicate a Congressional policy toward settlement of labor disputes by arbitration, for it denies injunctive relief to any person who failed to make 'every reasonable effort' to settle the dispute by negotiation, mediation, or 'voluntary arbitration'." (353 U. S. 448, 458 (1957).)

See also *Local 19 v. Buckeye Oil Co.*, 236 F. 2d 776 (C. A. 6, 1956), cert. den'd. 354 U. S. 910 (1957).

An important decision of the District Court for the Eastern District of Louisiana, coming after *Chicago River*,

focuses on the significance of the Supreme Court decisions since *Lincoln Mills* and *Bull Steamship, Baltimore Contractors v. Carpenters*, 188 F. Supp. 382 (E. D. La. 1960), joins the line of substantial authority holding that the judiciary cannot interpret Section 301 so as to override the anti-injunction laws. As the lower court in the subject suit, the district court in *Baltimore Contractors* relied upon *Railroad Telegraphers* for the basic rule against "judicial legislation." The district court refused to follow the reasoning of the Tenth Circuit in *Yellow Transit* that *Lincoln Mills* and *Chicago River* had lifted the Norris-LaGuardia ban over work stoppages during the term of a no-strike clause. The Louisiana federal court concluded:

"But none of this amounts to a pronouncement that the express prohibition of the Norris-LaGuardia Act will be cast aside to permit enjoining a strike when such action violates a provision of the collective bargaining agreement. The Railway Act exception was made in light of an explicit provision in the later enactment making arbitration of 'minor disputes' compulsory and declaring the Adjustment Board's decision 'binding upon both parties,' and it has been narrowly confined within the limits of that requirement.

"As for *Lincoln Mills*, an obvious distinction exists between the holding there that Section 7 of the Norris-LaGuardia Act may be circumvented and the suggestion here that Section 4 of the same Act should be ignored. It is one thing to get around procedural rules when they appear 'inapposite' and quite another to ride roughshod over a categorical prohibition." (188 F. Supp. 382, 383.)

The grave responsibility which the federal courts would assume by condoning injunctions as a means of ending collective bargaining disputes was seen by a district court in *Alcoa S. S. Co. v. McMahon*, 81 F. Supp. 541 (S. D. N. Y., 1948). The court refused an employer's request for an injunction against recalcitrant employees from refusing to

perform certain work assignments. Although the court admonished the union for being unable to exercise effective control over its membership, the court reasoned:

"Whatever state policy may be, it is not yet the policy of the United States judicially to compel obedience to collective bargaining agreements on pain of imprisonment." (81 F. Supp. 541, 544) (Emphasis added.)

The Second Circuit sustained the lower court in *Alcoa S. S. Co. v. McMahon*, 173 F. 2d 567 (C. A. 2, 1949), cert. den'd, 338 U. S. 821 (1949).

Numerous decisions since *Foss*, through *Bull Steamship*, up to *Baltimore Contractors* can be cited in accord. In *W. L. Mead v. Teamsters*, 217 F. 2d 6 (C. A. 1, 1954), a company sought an injunction against a peaceful strike then in progress by a union allegedly in violation of a no-strike clause. The First Circuit applied the unambiguous language of Section 4 of Norris-LaGuardia in determining that an injunction could not issue. Furthermore, the court could see no reason why Labor Management Relations Act should be so interpreted as to effectuate a partial repeal of the anti-injunction statutes:

"It is an accepted canon of construction that repeals by implication are not favored. The persuasive force of this aid to construction may be somewhat weakened where the question is whether the later enactment has by implication repealed some obscure and generally forgotten statute. But here the earlier enactment is a significant and tremendously important piece of legislation which the Congress evidently had specifically in mind when it came to enact the Labor Management Relations Act in 1947." (217 F. 2d 6, 9.)

With foresight, the court went on to recognize the possibility of equitable relief under Section 301 of the kind envisioned by *Lincoln Mills* "• • • in terms which do

not trench upon the interdictions of Sec. 4 of the Norris-LaGuardia Act." 217 F. 2d 6, 9. In this regard the Court should note the subsequent decision of the First Circuit in *Am. Fed. of Technical Engineers v. G. E.*, 250 F. 2d 922 (1957), cert. den'd 356 U. S. 938 (1958), holding that the courts may order parties to arbitrate without conflicting with Norris-LaGuardia or Clayton. Cf. *In re Third Ave. Transit Corp.*, 192 F. 2d 971 (C. A. 2, 1951). The same holding was rendered in *National Dairy Products v. Hefferman*, 195 F. Supp. 153 (E. D., N. Y., 1961); *Dredging Co. v. Operating Engineers*, 48 LRRM 2713 (E. D., N. Y., 1961); *I. B. E. W. v. Stone & Webster*, 42 LRRM 2584 (W. D. La. 1958); *Sound Lumber Co. v. Lumber & Sawmill Workers*, 122 F. Supp. 925 (D. C. Cal., 1954); *Castle & Cooke Terminals v. International Longshoremen*, 110 F. Supp. 247 (D. C., Hawaii, 1953); *International Longshoremen v. Libby, McNeil & Libby*, 115 F. Supp. 123 (D. C., Hawaii, 1953); and in *United Packinghouse Workers v. Wilson & Co.*, 80 F. Supp. 563 (N. D., Ill., 1948), in which the court acting under Norris-LaGuardia refused to issue an injunction on behalf of the union against the employer for continued breaches of the collective bargaining agreement. Cf. *Farrand Optical Co. v. I. U. E.*, 143 F. Supp. 527 (S. D., N. Y. (1956)), cited by the employer at page 15 of its Brief, which was decided prior to *Bull Steamship* and, therefore, can no longer be considered controlling. The Court should note that even though *Farrand Optical* did not apply Norris-LaGuardia, the district court distinguished a strike during the course of a bargaining contract over a strictly union jurisdiction question from those in which "a labor dispute" involving a substantive issue under the contract.

C. If an Injunction Is Sanctioned In This Action Inevitable Conflict Will Result Between the Court's Contempt Powers and the Procedures Established by Congress and Developed by the NLRB for Resolving Labor Disputes.

Whatever the resolution of *Yellow Transit*, we submit that no court has injunctive powers to reach into the indefinite future to establish itself as the primary control over the daily course of labor relations between unions and employers.

We remind the Court that the injunction sought by the plaintiff would attempt to place the going bargaining relation between the International and Local and Sinclair Refining into the hands of the courts. An injunction that would make every *alleged* interference with a grievance procedure subject to the contempt powers of a court would cast a heavy cloud over the development of mature relations between the parties. The effect of such an injunction could likely weaken or even destroy the grievance and arbitration procedure by giving the employer the opportunity for court control over its relationship with the union and the members of the bargaining unit.

It must be borne in mind that plaintiff's request for an injunction is not against any present activity by the defendants. Plaintiff is seeking an injunction against all of the defendants *and any person* who is subject to any collective bargaining agreement between the defendant unions and the company *in the future* who might in any manner interfere with "production, normal operations or normal employment at said refinery" over an issue which "could be the subject of a grievance under the grievance procedure." (Complaint, Ct. III, R. 18.)

Although the plaintiff's claim for an injunction is couched in terms of the collective bargaining agreement, in effect,

the plaintiff seeks to resurrect the common-law action of conspiracy to violate an employment contract which predates the Clayton Act.

Significantly for the present suit, Indiana was one of the first states to reject the conspiracy theory as a method for imposing individual liability on workers participating in a peaceful work stoppage. *Karges Furniture Co. v. Amalgamated Woodworkers*, 165 Ind. 42, 75 N. E. 877 (1905). See article by Bernard Mamet, *The Counterpart of Federal Law in the Labor Equation: Indiana as Illustrative of State Labor Law*, 32 Notre Dame Lawyer 563 (1957).

Under Section 301 of Taft-Hartley an employer, at most, is given power to sue a union for breach of the bargaining agreement. Count III of the Complaint attempts to avoid the limitations of Section 301 by imposing the contract as a matter of personal obligation upon every individual in the bargaining unit. This was the situation which developed after passage of the Clayton Act which brought Congress to pass the Norris-LaGuardia Act.

We must reiterate that Norris-LaGuardia was not passed to legalize all activity by unions and employees. The Act was adopted to prevent pre-emptory determinations of unlawfulness by the courts resulting in immediate injunctions as an arbitrary means of ending a labor dispute. The underlying policy of Norris-LaGuardia bears special significance to the issues at hand. By placing the future conduct of the Unions and Sinclair's employees under contempt powers, the door will be again open to the broad range of judicial control which existed at the turn of the century.

We again may be faced with employer affidavits, *ex parte* hearings, and preliminary injunctions and contempt citations. Instead of charges of breaches of em-

ployment contracts for attempted unionization, charges of "conspiracies to circumvent the grievance machinery" or "interference with production" will be levied against individuals and groups of employees on the strength of an aging permanent injunction. No one could foresee the maturation of an arbitration process sincerely followed by both management and labor in an atmosphere permeated with contempt citations. Furthermore, the reaffirmation of no-strike, no-lockout pledges at every anniversary date of a bargaining contract could hardly be expected.

In *The Labor Injunction* the use of the injunction before and during the era of the Clayton Act to bind entire groups of individual workmen to contempt proceedings is set out in great detail. The authors recite the admonition of Justice Brandeis, writing in dissent, on the abuse of the injunction on pages 132-33 of their work:

"* * * [T]he injunction is not ordinarily sought 'to prevent property from being injured nor to protect the owner in its use, but to endow property with active, militant power which would make it dominant over men'." (Brandeis, J., in *Truax v. Corrigan*, 257 U. S. 312, 368 (Dissent).)

The admonitions of Justice Brandeis demand application to the kind of injunction the Employer seeks this Court to condone. The elaboration of Justice Brandeis' concern with the potential abuse of the injunctive power in *The Labor Injunction* is vital to the present controversy. (Note *The Labor Injunction*, pp. 132-3.) The primary pitfalls of abuse set forth by the authors are cogent:

1. An employer could obtain *ex parte* restraining orders over any and all labor activity by simply submitting to the court a verified statement that the employer risks immediate damage to his property or business relations. Title 28, U. S. C. Fed. Rules of Civil

Procedure, No. 65(b). Whether or not the alleged activity was unlawful; whether the employer had committed unlawful acts which precipitated the activity; and whether the employer's business was in serious danger could only be heard after the activity was ordered stopped under the onus of contempt citations. The authors underscored the practical effects of *ex parte* orders and open hearings at a later date:

"The demarcation between permitted and forbidden activity is a process phrased in legal vernacular and executed through legal concepts. * * * Aside from the ambiguous meaning of loose concepts, no matter what content one adopts, there is the initial question, did the requisite event occur? The stuff for decision of this pure issue of fact is found in complaint and supporting affidavits; later, upon preliminary hearings, there are counter-affdavits." *The Labor Injunction*, p. 61.

See also, above work at pp. 201-2 on the permanent damage which can be administered by a well meaning judge, ill informed on labor relations, who issues a temporary restraining order with "* * * less opportunity for consideration than would be available if the question were one concerning the negotiability of a new form of commercial paper." *The Labor Injunction*, p. 202.

2. The vague coverage of injunctive orders operating into the future, as applied to entire union organizations and groups of employees puts large numbers of individuals within the civil and criminal contempt powers of the courts. See Rule 65(d) Fed. Rules of Civil Procedure. The effect of such injunctions is to resurrect old tort conspiracy doctrines which were used against union leaders and members in their individual capacities under loose charges of inducing breaches of contractual relationships. See, Chapter 3, *The Labor Injunction* and, in particular, footnote 96

on page 104, citing *Foss v. Portland Terminal Co.*, cited *supra* as an illustration of the use of the injunction against union officials which had been dissolved by a higher court.

The dissenting opinions of Justice Brandeis eventually found vindication in the public policy expressed by Congress through passage of Norris-LaGuardia. Congress has never revoked this policy and we submit that the employer is in gross error in seeking the federal courts to circumscribe this policy through decision.

D. A Permanent Injunction Over Undetermined Events Would Conflict With the Jurisdiction of the NLRB and the Basic Rights of Employees To Be Free From Employer Domination and Discrimination.

In addition to creating conflict between court action and grievance and arbitration procedures the requested injunction is completely incompatible with the jurisdiction of the NLRB and with the specific rights of employees under the National Labor Relations Act.

In the foregoing sections of this brief, we demonstrated that the NLRB has an established history of determining whether an unfair labor practice has been committed by an employer or union in connection with a work stoppage during the term of a no-strike clause. Under the Labor Management Relations Act the NLRB has been given express power to obtain cease and desist orders from federal courts for activity by management or labor, which are unfair labor practices. The right of the NLRB to obtain injunctions in certain classes of labor disputes has been specifically granted by Congress.

Should an injunction be allowed, the court's action would not only conflict with the exclusive jurisdiction of the NLRB, but extend its powers under Section 301 beyond that which was ever intended by Congress. In formulating

an administrative procedure for the adjudication of labor disputes Congress explicitly provided for injunctive relief in those situations in which it believed it was required.

Since the Wagner Act, through the 1947 and 1959 amendments contained in the Labor Management Relations Act, the grants of injunctive power to federal courts upon NLRB petitions has been the result of a conscious limitation by Congress on its earlier anti-injunction legislation. In the main, Congress has not chosen to simply return the injunction directly back to the hands of judges. The initiation of temporary and permanent mandatory relief must come from the Board processes. The careful delineation of the allowable areas of labor-management disputes which can be reached by restraining orders has paralleled the development of an expert administrative agency for the settlement of these disputes.

If the injunction is going to be interjected into disputes during the term of bargaining agreements, it must be left to Congress to decide on the extent and form the new procedures will take. Congress is conscious of its power in this area and as a matter of social policy has not chosen to act. The official legislative history of the Labor Management Relations Act of 1947 is testament to this fact. The Bill as first proposed by the Senate made it an unfair labor practice under Section 8(b) of the Act "To violate the terms of a collective bargaining agreement to submit a labor dispute to arbitration." Being an unfair practice, alleged work stoppages in contravention of grievance and arbitration procedures would be subject to restraining orders under the rules and hearing procedures of the NLRB under Sections 10 and 11 of the Act. *See U. S. Code & Congress. Service, 1st Sess., 80th Cong., p. 1150 (1947).*

The danger of "judicial legislation" through the issuance of injunctions under Section 301 was seen by the

Eighth Circuit in *Amalgamated Ass'n v. Dixie Motor Coach Co.*, 170 F. 2d 902 (C. A. 8, 1948). The court held that an employer could not seek an injunction against a union for instituting a secondary boycott picket line in violation of the Labor Management Relations Act. Section 303 of the Act, as Section 301, allows an employer to sue a union in federal court for engaging in an unlawful boycott. The employer sought an injunction under the power granted to sue the union. The court invoked Norris-LaGuardia and refused to hear the employer's request. The court emphasized the requirement not to disrupt an integrated policy over labor disputes which has been developed by Congress.

The same principle of legislative interpretation as applied to the Labor Management Relations Act was followed by the District Court for the Southern District of Indiana in *Sanders v. Birthright*, 172 F. Supp. 895 (1959). The court applied Norris-LaGuardia to a suit between an employer and union officials over the regulation of welfare funds. Section 302 of the Labor Management Relations Act contains exact procedures for the administration of these funds by employers and unions and grants the district courts power to enjoin violation of these procedures. The court held that the provision for injunctive relief could not be expanded to allow such relief where there had been no claim that the specific procedures of Section 302 had been violated. The district court's interpretation of Section 302 could well be translated to suits under Section 301:

"If subsection (e) in itself conferred jurisdiction upon the Court it would be a delegation of broad equitable powers upon the Courts to regulate Union Welfare Funds which would result in the birth and establishment of a federal law for the administration of welfare trusts. This Congress did not intend. Subsection (e) was necessary to remove the bars of the Norris-LaGuardia and Clayton Acts * * * in enforcing

violations of subsections (a) and (b) and was not included to establish broad jurisdiction for the District Courts * * *." (172 F. Supp. 895, 901.)

The requested injunction not only conflicts with the power of Congress to legislate, but contravenes the present primary authority of the NLRB. The Employer's position is predicated on the same misconception which underlies its attempt to avoid the application of the Supreme Court's ruling in *Garmon* as it relates to the action for damages against the Local Officials contained in Count II of the Complaint. The Employer incorrectly assumes that every refusal to work by an employee or so-called interference with the Employer's directives during the tenure of no-strike and arbitration clauses is unequivocally unprotected and, therefore, beyond the NLRB's power to investigate and hear. The continuous line of decisions by the Board cited in Section III of this Brief demonstrates the unsoundness of that position. (See authorities cited on p. 68 of Brief.) If the Employer were allowed its injunction the local federal district court would be cast on uncharted seas, inviting continuous collision with the Board where arbitration would have doubtful stability.

E. Regardless of Any Other Consideration, the Injunction Sought by the Plaintiff Is Beyond a Court's Equity Power to Grant.

The defendants have stressed the consequences which would be thrust upon a court and parties should an injunction be allowed. But even if Congress had not relieved the courts of power to enjoin labor disputes, the injunction requested in the present case should not be granted because it is impossible to administer.

The first point which must be considered is that the collective bargaining agreement upon which this action is

based is not for an indefinite duration. It is subject to renegotiation or termination at a prescribed date. That date was June 14, 1959. Nevertheless, plaintiff's demand for an injunction extends indefinitely and encompasses conduct under the last contract, " * * or an extension thereof, or any other contract, between the parties which shall contain like or similar provisions." (Complaint, Ct. III, R. 18.)

It is axiomatic that a court's equity power to enjoin breaches of contract cannot extend beyond the contract's duration. This request is without parallel in equity precedent. Leading decisions among state courts within the Seventh Circuit are among the well established authority that injunctions cannot be extended beyond the term of the agreement they are meant to enforce. The principle was clearly stated in *People ex rel. Hafer v. Flynn*, 144 N. E. 2d 747, 14 Ill. App. 2d 301, 314 (1957):

"When the right ceases, by expiration of the time fixed in the contract or otherwise, the injunction also ceases to have any force or power. It became *functius officio*" (Other Illinois authorities cited).

The same principle has been applied in Illinois to labor disputes. In *Preble v. Architectural Union*, 260 Ill. App. 435 (1931), the state court held that it had power to enjoin work stoppages over inter-union rivalry but that the injunction could not extend beyond the term of the plaintiff-employer's contract with the defendant union:

"Obviously the decree must be construed to mean that the injunction would not be in effect after the date of the expiration of the contract, namely, June, 1934." 260 Ill. App. 435, 442 (1931).

Accord: *Match Corp. v. Acme Match Corp.*, 1 N. E. 2d 867, 285 Ill. App. 197 (1936). Cf: Employer's analysis of *Preble* at page 13 of its Brief. Cf: Also *Schlesinger v. Quinto*,

194 N. Y. S. 401 (1922); *Goldman v. Cohen*, 227 N. Y. S. 311 (1928); *Meltzer v. Kaminer*, 227 N. Y. S. 459 (1927); *Gilchrist v. Metal Polishers*, 113 A. 320 (Chan., N. J., 1919); and *Burgess v. Georgia*, 96 S. E. 864, 148 Ga. 417 (1918) relied upon by the Employer on pages 11-13 of its Brief. In none of these cases was federal anti-injunction legislation involved nor was there any issue of the application of a state "little Norris-LaGuardia Act." None of these cases involved injunctions operative only in futuro. In fact, *Schlesinger*, *Gilchrist* and *Burgess* all specified that the restraint imposed should not extend beyond the term of the current bargaining agreement. The Court should also note that *Schlesinger* and *Meltzer* are listed in Appendix III, and *Goldman* on page 110 of *The Labor Injunction* as New York injunction cases dealing with labor disputes from 1920-28.

The effect of an injunction into the future has far more serious consequences than the limits placed upon the parties' contractual rights. We must impress the Court again that the injunction requested would subject every major and minor dispute and quarrel which might be subject to a grievance to contempt charges. Judicial power would be felt over every type of discord in the plant which might temporarily effect production. The injunction would reach the entire membership of the Local and any wrangle a worker might have with his immediate supervisor. It requires a complete divorcement from reality to believe that all of the healthy and commonplace give and take between management and labor can occur with the constant threat of a citation proceeding.

Every claimed interference with production by a workman would have to be tested by the district court for violation of its injunction. In every instance the court would have to determine if the workman had in some way impeded production and, if so, was his action a legitimate response

to a prior breach of the bargaining agreement by a supervisor.

The Supreme Court in *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 85 L. Ed. 930, 61 S. Ct. 693 (1941) set down the fundamental rule that injunctions in labor disputes, when allowed, cannot restrain acts which might occur in the future, other than the concrete, specific issue which has been adjudicated by the court. In *Express Publishing* the Supreme Court said:

"But the mere fact that a Court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged." (312 U. S. 426, 435-6.)

The Supreme Court's decision is directly applicable to this case. The plaintiff's request for an injunction is of such an ambiguous and broad nature than any unpredictable and short-lived dispute by any member of the bargaining unit could come within the contempt processes of the injunction. Accord: *N. L. R. B. v. Stone*, 125 F. 2d 752 (C. A. 7, 1942) cert. den'd, 317 U. S. 649 (1942), in which the Seventh Circuit refused to uphold a cease-and-desist order of the NLRB covering all future violations by an employer of the right of a union to organize and engage in concerted activities. The court held that the order was too broad and would include numerous unfair labor practice charges unrelated to the charge brought in the instant case. Accord: *N. L. R. B. v. Burry Biscuit Corp.*, 123 F. 2d 540 (C. A. 7, 1941) in which the Seventh Circuit held that an order of the NLRB directed against the respondent and their "agent, successors and assigns" was not en-

forceable because it attempted to cover individuals unrelated to the dispute.

The ramifications of an injunction issued in the subject case were pointedly stated by the Court of Appeals for the District of Columbia in *Morrison-Knudson Co. v. N. L. R. B.*, 270 F. 2d 864 (1959). The court refused to enforce a NLRB order insofar as it sought to forbid future conduct by an employer. The court cautioned:

“It is well to bear in mind that a court of appeals should not become a labor court of first instance by virtue of its contempt powers.” (270 F. 2d 864, 865.)

The requested injunction is contrary to law and disturbs common reason. It would handcuff relations between the parties by such a degree that it would lead into the further error of having an order issue which is so sweeping as to enjoin acts made lawful. *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323, 82 L. Ed. 872, 58 S. Ct. 578 (1938.) The commodity sold by the wage earner is his manpower. No court of the United States has the power to force the sale of that commodity. Givens, *Section 301, Arbitration and the No-Strike Clause*, Vol. 11 Labor L. J. 1005, (1960.) The Labor Management Relations Act and the collective bargaining process is an attempt to resolve disputes, not by arithmetic formulas, but by determining what can reasonably be expected of men in any given situation.

CONCLUSION.

The Respondents respectfully urge that the Decision of the District Court dismissing Count III of the Complaint and the affirmation of the Court of Appeals in this action be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

Nos. 430 and 434

SINCLAIR REFINING COMPANY, A CORPORATION,
*Petitioner in No. 434, and
Respondent in No. 430*

vs.

SAMUEL M. ATKINSON, ET AL.,
*Respondents in No. 434, and
Petitioners in No. 430.*

**BRIEF AND ARGUMENT FOR SINCLAIR REFINING
COMPANY, PETITIONER IN NO. 434 AND RESPOND-
ENT IN NO. 430.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

Nos. 430 and 434.

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner in No. 434, and
Respondent in No. 430

vs.

SAMUEL M. ATKINSON, ET AL.,
Respondents in No. 434, and
Petitioners in No. 430.

**BRIEF FOR PETITIONER, SINCLAIR REFINING
COMPANY.**

OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit (R. 65) is reported at 290 F. 2d 312. The opinion of the District Court for the Northern District of Indiana, Hammond Division (R. 42-46), is reported at 180 F. Supp. 225.

JURISDICTION.

The judgment of the Court of Appeals was entered April 25, 1961. Companion petitions for certiorari by both parties were granted December 11, 1961. Jurisdiction rests on 28 U. S. C. Section 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

Fifth Amendment to the U. S. Constitution.

National Labor Relations Act, 61 Stat. 136, 29 U. S. C. 151, *et seq.*, Sections 1, 7, 8(a) (1) and (5), 8(d), 201(c), 203(d), and 301(a) and (b) and 303(b) are particularly involved.

Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. 101, *et seq.*

The relevant provisions are printed as an Appendix hereto.

FORM OF BRIEFS.

Because of the grant of cross petitions raising distinct points and in order to avoid a multiplicity of briefs, this Court on December 27, 1961, approved a stipulation by which the parties have exchanged, in typewritten form, their affirmative briefs before printing. We print ours herewith together with our Answer to our opponent's affirmative presentation in No. 430. Our answering material in No. 430 is separately stated following our affirmative presentation in No. 434. Each side will file a reply brief.¹

QUESTION PRESENTED IN 434.

Whether the Norris-LaGuardia Act, 29 U. S. C. 101, *et seq.*, precludes injunctive relief against continuance of a course of conduct by which a union and its members utilize strikes to procure settlements of grievances in violation of a labor contract which forbids strikes over them and provides they must be handled through a grievance procedure culminating in compulsory arbitration.

1. Because of the companion petitions, and to avoid confusion, we refer to the parties in their original classifications of plaintiff and defendants.

STATEMENT IN 434.

This case arose out of a series of nine so-called "employee grievance strikes" in a nineteen-month period in violation of a no-strike compulsory-arbitration labor contract at a refinery operated by petitioner in East Chicago, Indiana.

The decisions below were based on the complaint and motions by defendants to strike the complaint and to stay the action.

The complaint (R. 8) is brought against Oil, Chemical and Atomic Workers International Union, AFL-CIO, an international union and labor organization which for some time had been collective bargaining agent for sundry refineries operated by the plaintiff, including that at East Chicago, Indiana, its Local 7-210 which was also the recognized collective bargaining agent at East Chicago, and twenty-four individuals who were employees in the East Chicago refinery, and were committeemen of the Local Union and agents of the International.

The complaint, filed March 12, 1959, alleges the existence of a collectively bargained contract (R. 19) between the plaintiff and the International which had been accepted by the Local Union, effective June 15, 1957 to June 14, 1959, and thereafter subject to renewal provisions. The contract (Art. III, p. 3) provides that,

"* * * there shall be no strikes or work stoppages:

- "(1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or
- "(2) For any other cause, except upon written notice by Union to Employer provided:" (Then follow provisions providing for conferences after the service of such notice and before any strike may be carried into effect.)

Article XXVI of the contract (p. 31), entitled "Grievance and Arbitration Procedure," contains the following material and mandatory provisions:

"1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations.

"GRIEVANCE PROCEDURE.

"It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed:

"2. For the purpose of adjusting employee grievances and disputes as defined above, it is agreed that any employee, individually or accompanied by his committeeman, if desired shall:" (Then follow detailed provisions as to how employees should present grievances with time limitations provided for the various steps in the discussion procedure going through the managerial hierarchy to the Director of Industrial Relations of the Company, or his designee, who is required to render a decision to the President of the International Union (p. 33). If such decision is not satisfactory)

"* * * then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after formation of such Board. Such local boards may be set up at each refinery to deal with cases arising therefrom: * * *

"8. The above mentioned local Arbitration Board shall be composed of one person designated by Employer and one designated by the President or District Director of the Oil, Chemical and Atomic Workers

International Union, AFL-CIO. The board shall be requested by both parties to render a decision within seven (7) days from date of submission. Should the two members of the board selected as above provided, be unable to agree within seven (7) days, or to mutually agree upon an impartial third arbitrator, an impartial third member shall be selected within seven (7) days thereafter by the employer or employee member of the Arbitration Board, or such two parties jointly, requesting the Federal Mediation and Conciliation Service to submit a panel of arbitrators from which the third member of the board will be selected in accordance with the procedure of such Federal Mediation and Conciliation Service.

"9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. • • •"

The complaint is in three counts. Count I is bottomed on Section 301 of the Labor-Management Relations Act and prays damages for a strike participated in by approximately 999 of the approximate 1700 employees within the bargaining unit at the East Chicago refinery on February 13 and 14, 1959, over asserted pay claims on behalf of three members of the bargaining unit aggregating \$2.19. The complaint alleges these claims could, and, if valid, should have been the subject of a grievance under the contract. It prays \$12,500 damages.

Count II is bottomed on diversity jurisdiction and is against the individual defendants. It alleges they induced breaches of the labor contract binding on the unions, themselves and all others in the bargaining unit, and fomented, assisted and participated in the strike of February 13-14, 1959. It prays \$12,500 damages.

Count III is against all defendants, rests upon both Section 301 of the Labor-Management Relations Act and diversity, and alleges that the strike of February 13-14, 1959 was but the last in a series of nine illegal strikes between

July 1, 1957 and its date, all over asserted grievances, which could, and, if valid, should have been submitted for disposition and, if necessary, to final arbitration under the grievance procedure of the contract; that each of the strikes caused substantial damages which were incapable of precise ascertainment but were greatly in excess of \$10,000; that the pattern of repeated violations showed either that the defendants do not regard the no-strike contract as binding, or, in the alternative, deliberately and consistently violate it and will so continue unless enjoined. It alleges that plaintiff has no adequate remedy at law because it would be forced to resort to a multiplicity of actions in which full and complete damages would be impossible of assessment, and that such inadequate remedies at law would not achieve the national policy of avoiding unnecessary interruption of production of goods for commerce. It prays an injunction that would restrain defendants from aiding any strike because of any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of the contract, or any extension thereof, or any other contract which might contain like or similar provisions.

Upon motion to dismiss, the District Court originally held all three counts of the complaint were good. It held also that the defendants' motion to stay the action pending disposition of certain grievances filed after the February 1959 strike, and alleged to involve some of the facts asserted in the complaint, should be denied (R. 26). Upon motion to reconsider, the District Court reversed its ruling as to Counts II and III. It held, in substance, that since a labor union may now be sued under Section 301 for breach of a contract, the officers and members no longer may be sued for inducing union or individual breaches. As to the injunction count, it held that *Order of Railroad Telegraphers v. Chicago & North Western R.*

Co., 362 U. S. 330, indicated that the Norris-LaGuardia Act did not permit the specific enforcement of a no-strike clause in a labor contract (R. 42-46).

The Court of Appeals for the Seventh Circuit held that Counts I and II were good, but that the injunction count was bad (R. 65-79).

Plaintiff sought certiorari on dismissal of the injunction count. The defendants sought certiorari on the holding that Count II was valid and, additionally, on their theory that the entire action should be stayed pending possible arbitrations which it asserted involved the subject matter.

SUMMARY OF ARGUMENT.

Although no-strike, compulsory-arbitration contracts prior to adoption of the Norris-LaGuardia Act were relatively few in number, such contracts were regarded as socially "commendable". They uniformly were enforced by injunctions forbidding strikes or lockouts as might be appropriate. There is nothing in the literature on Norris-LaGuardia or in the Congressional debates on it indicating that it was aimed at injunctions which merely enforced the obligations of a collectively bargained contract.

Although the definition of "labor dispute" in Norris-LaGuardia is broad, it has been recognized that it does not comprehend every dispute between employers and employees but only those which the history of the Act and its substantive provisions indicate Congress felt should be free from injunctive restraint. Violation of a lawful contract freely entered into is unlawful and was not a "lawful object of association" which Congress desired to protect in passing Norris-LaGuardia.

The prime purpose of the Act was to protect what were believed to be constitutional rights of free assembly and effective association. There is no right, constitutional or otherwise, to violate a contract freely and fairly entered into. Norris-LaGuardia, properly construed, never did deprive Federal courts of the power to enter injunctions of the type here involved.

If it be thought that Norris-LaGuardia ever did bar this type of injunction, it is clear that the 1947 Amendments of the Labor-Management Relations Act, stressing the importance of adherence to contracts and the desirability of arbitration as a means of settling interim

disputes, have the effect of modifying it. The Norris-LaGuardia Act, the Railway Labor Act, and the Labor-Management Relations Act are all part of a pattern of labor legislation to foster collectively bargained contracts and to reduce industrial strife.

In *Brotherhood v. Chicago R. & I. R. Co.*, 353 U. S. 30, the court held that the adjudicatory processes of the National Railroad Adjustment Board for determination of so-called "minor disputes" in the railway field was a suitable substitute for strikes over them, and that such strikes could be enjoined. Every reason of policy dictating the *Chicago River* decision applies with equal, if not greater, force in the general industrial field where the parties, by contract, have agreed that grievances during the term of a contract shall be settled by compulsory arbitration and that there shall be no strikes.

Order of Railroad Telegraphers v. Chicago & North Western Ry. Co., 362 U. S. 330, held by the courts below to preclude injunctive relief, was totally different from this case. The controversy there related to a permissible effort to change conditions of employment; there was nothing unlawful in what the union sought. The *Telegraphers* decision was not a retreat from the *Chicago River* decision. It was simply a different case involving a so-called bargainable matter rather than a minor dispute as to adherence to an existing contract which could be settled by some form of arbitration.

The Court has held in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, and similar cases, that an employer's obligation to arbitrate under a no-strike, compulsory-arbitration contract may be enforced injunctively. To hold that employees may have injunctive enforcement of the arbitration clause despite Norris-LaGuardia, but that the employer cannot have injunc-

tive enforcement of the *quid pro quo* no-strike clause, would be to give Norris-LaGuardia an unconstitutional construction. Such construction would deny employers equal protection of the law.

Equal protection of the law has been recognized as an integral part of the due process guaranty of the Fifth Amendment by *Bolling v. Sharpe*, 347 U. S. 497, which held racial discrimination in public schools in the District of Columbia to be as vulnerable to the due process guaranty of the Fifth Amendment as it was held to be vulnerable to the equal protection guaranty of the Fourteenth Amendment in *Brown v. Board of Education*, 347 U. S. 483.

Injunctive enforcement of a negative covenant not to strike is the only adequate remedy which can be given. The remedy by way of damages, either for a long strike or a succession of short, so-called "wildcat" strikes, is wholly inadequate. The remedy which does the least harm to the future relations of the parties, and at the same time is most effective, is the injunction which stops illegal action before it has progressed too far.

(Our Summary of Argument in No. 430 will be found on p. 40, *infra*.)

ARGUMENT.

I.

**NO-STRIKE, COMPULSORY-ARBITRATION CONTRACTS,
PRIOR TO THE NORRIS-LA GUARDIA ACT, WERE UNI-
FORMLY ENFORCED BY INJUNCTIONS FORBIDDING
STRIKES WHICH VIOLATED THEM.**

Prior to 1932 it was unquestioned that labor contracts involving covenants either by the employees not to strike or by the employer not to lock out, but to arbitrate, were specifically enforceable by injunction.

Although the number of no-strike, compulsory-arbitration contracts, pre-Norris-LaGuardia, were relatively small so that there were but few cases, and although the contracts were not so elaborate as those now current, the fact is that such courts as considered them regarded them as socially desirable and enforced them by injunctions tailored to meet the particular violation which was presented. Such decisions were not criticized in *Frankfurter and Greene*, "The Labor Injunction" (1930), the most reasoned statement of the case for the bill which ultimately became the Norris-LaGuardia Act, nor in the subsequent Congressional debates.

In 1922 the Appellate Division in New York held that where a union and an employers' association had entered into a three year contract and the employers' association during its term directed its members to break the contract by lowering wages, a court of equity would compel the employers' association, by injunction, to rescind its action. The Court said *inter alia*:

"* * * This contract has mutual obligations binding on the parties thereto. Each party knows the obliga-

tion that it has assumed and the consequences of failure or refusal to perform those requirements. Through its control of its members it can compel performance. Under such circumstances, a decree of a court of equity can be enforced against either party and in favor of the other. * * * (Schlesinger v. Quinto, 201 App. Div. 487, 194 N. Y. S. 401, 410).

In 1928 the Appellate Division again enforced a labor contract in *Goldman v. Cohen*, 222 App. Div. 631, 227 N. Y. S. 311. The contract provided: "[T]here shall be no strike or lockout pending the determination of complaints of grievances hereunder throughout the entire period of this contract." The employer threatened a lockout. The court upheld an injunction against it. After referring to cases authorizing injunctions where a union struck in violation of its contract, the court went on to say at page 313:

"* * * where an employer is threatening to order a lockout of his employees in violation of his contract with the labor union in behalf of the employees, the right of a court of equity to prevent such contractual violation is necessarily measured by the same principle. *Schlesinger v. Quinto*, 201 App. Div. 487, 194 N. Y. S. 401. In both cases an injunction should issue, where there is no adequate remedy at law and the damages are irreparable."

In *Meltzer v. Kaminer*, the Supreme Court of New York in 1927 applied the other face of the coin (131 Misc. 813, 227 N. Y. S. 459). The court held there was a contract, the expiration date of which was fixed by parol at June 15, 1927. It provided that "work would continue uninterruptedly as long as the agreements were lived up to by the employers." In March 1927 union officials sent out notices that there would be a strike unless a wage increase was put into effect April 4, 1927. The court entered an injunction enjoining the officials from calling a strike pending trial of the action but not beyond the termination date of the con-

tract. The report of the decision does not make it plain whether the contract contained an arbitration clause.²

In 1930 the Appellate Court of Illinois in *Preble v. Architectural Iron Workers' Union*, 260 Ill. App. 435, had before it a no-strike, no-lockout, arbitration contract. The court found the contract "commendable" and held, at page 440:

"* * * Its commendable purpose was to fix the terms and conditions of employment so that there would be no lockout or strikes without submitting the dispute, if any, to arbitration. And the defendant union, through its officials, having without any fault on the part of the complainant, called strikes and threatened to call other strikes, solely on account of a dispute with another union and without any endeavor at arbitration in violation of the terms of the contract will be enjoined by a court of equity. * * *"

There were other cases in which there were contracts that fixed wages for a definite period of time, some of which contained the equivalent of a no-strike clause and others of which did not. Strikes in violation of such contracts were held enjoinable. An example of the former class of cases is *Gilchrist v. Metal Polishers Union* (N. J. Chan., 1919), 113 A. 320, 321, in which the contract provided,

"* * * there should be no further labor troubles, in which the unions would be a party, for a period of one year from the date of the letter * * *."

A strike within the one year period was enjoined. Typical of the second class is *Burgess, et al. v. Georgia, etc. Ry. Co.*, 148 Ga. 415, 96 S. E. 864 (1918).

We believe there were no cases prior to *Norris-LaGuardia* holding that contracts of the nature we have discussed

2. The *Schlesinger*, *Goldman* and *Meltzer* cases were well known to students of the subject. Frankfurter and Greene comment on, and do not criticize the first two at pages 109-110; *Meltzer* is listed at p. 249.

could not be specifically enforced by injunctions against whichever party offended. The general doctrine of this line of authority was in no way criticized in the Norris-LaGuardia debates.

II.

THE NORRIS-LA GUARDIA ACT WAS NOT AIMED AT INJUNCTIONS PROHIBITING STRIKES WHICH WERE VIOLATIVE OF NO-STRIKE, COMPULSORY-ARBITRATION CONTRACTS, AND THE STRIKES HERE WERE NOT "LABOR DISPUTES" WITHIN THE MEANING OF NORRIS-LA GUARDIA.

There is not a line of legislative history indicating that when Congress adopted Norris-LaGuardia in 1932 it believed unions had a right to strike in violation of contracts freely entered into not to do so, or that it intended to deprive employers of any remedy against strikes which violated such contractual obligations.

The debates are replete with statements that what Congress was endeavoring to do was to protect the constitutional right of employees freely to assemble and conduct strikes that were not unlawful. Paraphrasing from *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, 458, injunctions against "the failure to adhere to no-strike contracts was not a part and parcel of the abuses against which Norris-LaGuardia was aimed."

It is dialectically possible to read the definition of "labor dispute" in Section 13(c) of Norris-LaGuardia as embracing every conceivable difference that can arise between an employer and employees with respect to the employment. It can be argued that even though the "terms and conditions" have been agreed to for a fixed period, an interim dispute as to whether an employer has lived up to the agreed terms, i.e., here whether the employer owed three

men \$2.19, or 73¢ each, is one "concerning" such terms and conditions.

A sounder construction is, we submit, to recognize that the reach of the definition of "labor dispute" is determined by the objectives of the Act. Thus in *Farrand Optical Co. v. Local 475*, S. D. N. Y., 143 F. Supp. 527, it was held that where "terms and conditions" have been agreed to, any further dispute about them is not a "labor dispute" within the meaning of Section 13(c).

In such cases as *Virginian Ry. v. System Federation*, 300 U. S. 515; *Graham v. Brotherhood of Locomotive Firemen*, 338 U. S. 232; *Brotherhood v. Chicago River & Indiana R. Co.*, 353 U. S. 30; *Textile Workers v. Lincoln Mills*, 353 U. S. 448 and *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, this Court in total effect has held that "labor dispute" in *Norris-LaGuardia*, broad though the term may be, does not comprehend *every dispute* between employers (or their associations) and employees (or their associations or those seeking to represent them), but only those which the history of the Act and its substantive provisions indicate Congress felt should be free from injunctive restraint.

We have come so far since the days of the debates on *Norris-LaGuardia* that it is important to remember that prior to its passage there was no federal substantive law of labor relations outside of that in the railroad field. Nevertheless, federal courts had issued injunctions which had the effect of curbing organizational and economic activities of unions. The "law" that had been applied in such cases was derived from the Interstate Commerce Act, the Sherman Act, and, in diversity cases, "federal common law" under the doctrine of *Swift v. Tyson*, 41 U. S. 1 (*Frankfurter and Greene*, "The Labor Injunction" (1930), pp. 5-17; *Brotherhood v. Chicago R. & I. R. Co.*, 353 U. S.

30, 40). It is apparent from *Frankfurter and Greene* and the debates on Norris-LaGuardia that Congress did not believe that any of those sources constituted a valid basis for preventing employees from organizing into unions or striking to better their lot. Nor did it believe the mere fact of organizing constituted illegal conspiracy. Section 4 of the Act, which lists the types of activities which may not be enjoined, supports these conclusions. *Cf. Thornhill v. Alabama*, 310 U. S. 88.

Congress conceived Norris-LaGuardia as a protection of "fundamental rights guaranteed by the Constitution" (Sen. Blaine at 75 Cong. Rec. 4618).

The Majority Report on the Act stated:

"The primary object of the proposed legislation is to protect labor in the lawful and effective exercise of its conceded rights—to protect, first, the right of free association and, second, the right to advance the lawful object of association." (Sen. Rep. No. 163, 72nd Cong., 1st Sess., p. 10.)

There neither was nor is any "constitutional" or "fundamental" right to violate a lawful contract freely entered into. Or, stated more closely to the language of the report—an unlawful strike is not a "lawful object of association" which it has any "right" whatsoever to advance.

Congress made clear that the federal courts were not deprived of jurisdiction to enjoin acts which were "unlawful" (Section 7). Senator Blaine, one of the sponsors of the legislation, commented:

"Doubtless there are some labor people who entertain considerable disappointment. *Some would like to have a bill under which no more injunctions could be issued in labor disputes.*" (75 Cong. Rec. 4630; emphasis added.)

Representative LaGuardia, the sponsor of the bill in the House, declared:

"Gentlemen, this bill does not—and I can not repeat it too many times—this bill does not prevent the court from restraining any *unlawful* act. This bill does prevent the Federal court from being used as an agency for strike-breaking purposes and as an employment agency for scabs to break a *lawful* strike." (75 Cong. Rec. 5478; emphasis added.)

The Majority Report states:

"It is not sought by this bill to take away from the judicial power any jurisdiction to restrain by injunctive process, unlawful acts or acts of fraud or violence." (Sen. Rep. No. 163, 72nd Cong., 1st Sess., p. 11.)

If the position of the unions in the case at bar is correct, Senator Blaine and Representative LaGuardia, rather than making the statements they actually made, should have said to their colleagues:

"Gentlemen, we have drawn this bill so tightly and its definitions so limitlessly that even though unions unlawfully break contracts freely entered into not to strike, they cannot be enjoined from continuing that unlawful course of conduct if it is carried on without extreme and uncontrollable violence."

The statement we have just supposed, accurately, if bluntly, states the core of the unions' present position. It is utterly antagonistic to the entire tenor of the Norris-LaGuardia debates.

It goes without saying that if the sponsors of the bill had made such statements to the Congress in 1932, the bill would not have passed. No conscientious member of Congress would have made the representations that Senator Blaine and Representative LaGuardia actually did make if he believed that the bill in fact was so tightly

drawn, or had such a sweeping definition, that it would have the effect envisioned in the imaginary statement we have posited. If that be true, we suggest it is clear that Congress did not intend to prohibit injunctions against unlawful strikes of the variety we are considering.

There is not the slightest evidence that Congress desired to eliminate injunctive enforcement of collectively bargained contracts. As we have seen, there were such contracts in existence in 1932, which had been enforced by injunctions against both strikes and lockouts. There was not a breath of complaint about this practice. It was not one of the evils at which the Act was directed.

Section 7 of Norris-LaGuardia makes it clear that Congress fully intended that where "unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained" that an injunction may issue. A strike in violation of a solemn covenant not to strike is obviously an unlawful act and had been so held consistently prior to passage of Norris-LaGuardia. Congress necessarily legislated in the light of that background law. *U. S. v. Sanges*, 144 U. S. 310.

Viewing the Act in totality, we submit that the unlawful acts of unions, their officials or members in conducting strikes in violation of contracts not to do so cannot properly be held to be "labor disputes" which it was the purpose of Norris-LaGuardia to protect from injunctions. If such unlawful activities are not "labor disputes" within the proper meaning of that phrase, then an equity court should pass upon Count III of the complaint at bar without regard to the Act (*Locomotive Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U. S. 528).

The courts below proceeded upon the premise that the unlawful act of striking in violation of a contract neverthe-

less was a "labor dispute" within the meaning of *Norris-LaGuardia*. They reached that result by what we believe to be a misinterpretation of *Order of Railroad Telegraphers v. Chicago and North Western Railway Co.*, 362 U. S. 330.

Although the *Telegraphers* opinion speaks of the broad definition of "labor dispute" in Section 13 of *Norris-LaGuardia*, it rests upon the fundamental holding by the Court that the controversy there related to a permissible "effort on the part of the union to change the 'terms' of an existing collective bargaining agreement. The change desired just as plainly referred to 'conditions of employment' " (p. 336). Moreover, the Court found there was nothing in what the union sought to accomplish that was "unlawful" (pp. 340-341).

What the courts below overlooked was that *Telegraphers* was not a retreat from, but a reaffirmation of, *Chicago River* (p. 341). In the parlance of Railway Labor, grievances as to interpretation of, or adherence to, a contract during its term are "minor" disputes which may be carried to, and settled by, the National Railroad Adjustment Board just as "grievances" in the case at bar may be carried through the contractual grievance procedure and determined ultimately by binding arbitration.

In *Telegraphers* the union wished to bargain with the railroad employer over the matter of station abandonments and protection of its members in such circumstances. Once the Court found, as it did (p. 341), that this was a "bargainable" matter or a "major dispute" within the meaning of Railway Labor the non-applicability of *Chicago River* was clear.

The Court, in *Telegraphers*, did not rest its decision upon a mere fiat or blind adoption of the words "labor dispute" in *Norris-LaGuardia*, but upon an examination of the nature of the "dispute" and a finding that it did, in

fact, concern the union's desire for a permissible and lawful change in contractual arrangements concerning "terms and conditions" of employment. Such a finding cannot be made here:

Count III of the complaint at bar alleges a succession of strikes, not to change the contractual arrangements between the parties or the terms and conditions of employment in any way whatsoever, but to enforce the strikers' views as to how the agreed "terms and conditions of employment" were to be applied or construed. The forum for settlement of such a difference of opinion was provided by the contract at bar to be the grievance procedure and compulsory arbitration, just as in *Chicago River* similar controversies were to be determined by the National Railroad Adjustment Board. Not only did the contract at bar outlaw the strike as a weapon in such differences of opinion but it provided the "reasonable alternative" (*Chicago River* at p. 41) of binding arbitration.

Moreover, Count III of this case shows, and the motion to dismiss admits, impermissible and unlawful action in derogation of a fixed condition of employment, namely, no participation in strikes.

Telegraphers, properly understood, is not authority for a holding that the strikes here were protected "labor disputes" within a proper interpretation of the definition of "labor disputes" in *Norris-LaGuardia*—rather, as applied to the facts of this record, it is a reaffirmation of *Chicago River* and persuasive that these admittedly illegal strikes over alleged grievances are not protected "labor disputes" within the meaning of that phrase in *Norris-LaGuardia*.

Finally, we respectfully suggest that we are arguing simply that *Norris-LaGuardia* should be construed in the light of its objectives rather than broadly construed to extend beyond them. In this we are aided by the basic

principle that statutes ousting the jurisdiction of courts "are to be strictly interpreted." *State v. Sullivan*, 110 N. C. 513, 14 S. E. 796, 798; *Virginian Ry. Co. v. System Federation*, 84 F. 2d 641, 647, aff'd 300 U. S. 515.

III.

IN 1947 CONGRESS DECLARED NATIONAL POLICY TO BE THAT COLLECTIVELY BARGAINED CONTRACTS SHOULD (A) CONTAIN SOME METHOD FOR FINAL PEACEFUL ADJUSTMENT OF GRIEVANCES ARISING DURING THEIR TERMS, AND (B) THAT SUCH CONTRACTS MUST BE ENFORCED. IF IT BE ASSUMED THAT NORRIS-LA GUARDIA ORIGINALLY BANNED INJUNCTIVE ENFORCEMENT OF NO-STRIKE CLAUSES SO THAT THERE IS A CONFLICT BETWEEN IT AND THE 1947 AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT EXPRESSING THE POLICY HEREIN STATED, THE LATTER MUST GOVERN.

If it be thought that Norris-LaGuardia standing alone did effectively oust the jurisdiction of federal courts to enforce, by injunctive processes, contracts not to strike, it becomes necessary to consider whether that 1932 legislation is effective against later enactments clearly designed to make no-strike-arbitration contracts enforceable in the federal courts.

In *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, it was held that the provisions of the Railway Labor Act of 1934 looking to peaceful adjudicative settlements of disputes could not be rendered nugatory by the earlier and more general provisions of Norris-LaGuardia. In *Brotherhood v. Chicago River & Ind. R. Co.*, 353 U. S. 30, 40, the Court held, "that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved." In *Textile Workers v.*

Lincoln Mills, 353 U. S. 448, the Court held in a case arising under the National Labor Relations Act that jurisdiction to compel arbitration of grievance disputes is not withdrawn by the Norris-LaGuardia Act.

These landmark cases, clearly establishing that Norris-LaGuardia does not stand alone, were followed by *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, *Locomotive Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U. S. 528, *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564, and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, all stressing and enforcing the federal policy for the settlement of interim labor disputes by arbitration. The cases are too fresh in the Court's mind to require elaboration by us.

The sum of this line of authority is that the 1947 amendments to the National Labor Relations Act made it clear that it is the policy of the United States that agreements by unions not to strike over interim disputes, but to arbitrate them, must be enforced, and that Norris-LaGuardia should be harmonized with the later legislation.

In the context of this record, we do not think that there is any disharmony between Norris-LaGuardia and the Labor-Management Relations Act of 1947; in any event, the purposes of these acts "are reconcilable" and there can be "an accommodation" of Norris-LaGuardia and Labor-Management Relations just as the Court has found "accommodation" between Norris-LaGuardia and The Railway Labor Act "so that the obvious purpose in the enactment of each is preserved." (*Cf. Brotherhood v. Chicago River & Ind. R. Co.*, 353 U. S. 30, 40.)

Let us now see how strong present policy is:

The opinion in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, emphasizes the importance Congress attached

to Section 301 of the Labor-Management Relations Act. At pages 453 and 454, the opinion points out that,

“Congress was also interested in promoting collective bargaining that ended with agreements not to strike.”

The opinion (and the Appendix attached to Justice Frankfurter's opinion) quotes at length from statements in the debates and the reports of 1947 as to the urgent desire of Congress to make no-strike arbitration agreements fully enforceable. Moreover, it is important to note that *Lincoln Mills* recognized that:

“Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce *these agreements on behalf of or against labor organizations* and that industrial peace can be best obtained only in that way.” (p. 455, emphasis supplied.)

This carefully chosen language foreshadows proper decision of the case at bar: It does not say that only the agreement to arbitrate should be enforced, or that only the agreement not to strike should be enforced. It says that each is the *quid pro quo* for the other and that “these agreements” should be enforced. And it is obvious that if the national policy is to succeed it must have two legs to stand on rather than one. Not only must the affirmative covenant of the employer to arbitrate be specifically enforced, but the negative covenant of the union not to strike must be specifically enforced.

The *Lincoln Mills* opinion is centered around Section 301 of the Labor-Management Relations Act. There are other sections of that Act not discussed in the *Lincoln Mills* opinion which add great weight to its teaching:

Congress was so concerned with so-called "quickie" strikes before there had been *bona fide* bargaining that in 1947 it inserted Section 8(d) in the National Labor Relations Act requiring, *inter alia*, that where there was a collective bargaining contract the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify it unless he serves a sixty day written notice upon the other party, offers to meet and confer for the purposes of negotiation, and continues in full force and effect, without resorting to strike or lockout, all terms and conditions of the existing contract for a period of at least sixty days. It is apparent that if Congress outlawed³ the so-called "quickie" strike called without real prior bargaining and immediately upon the expiration of a contract, *a fortiori* strikes in flat violation of the provisions of a contract during its term would be even more repugnant to the national policy.

Even under the original National Labor Relations Act it had been recognized that a strike or refusal to work in accordance with the terms of a contract was an unlawful repudiation by individual employees of their agreements and justified their discharges (*N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 332; *N. L. R. B. v. Draper Corp.*, 4 Cir., 145 F. 2d 199). Such strikes were patently illegal and there was no necessity for a legislative declaration in 1947 that they were illegal.

There was, so believed Congress in 1947, persuasive reason for making contracts by unions enforceable against them (See, once more, the *Lincoln-Mills* decision) and for strengthening the policy supporting arbitration of interim disputes. The two objectives—to make the no-strike clause

3. The power of government to limit or regulate the right to strike is unquestioned. *Dorchy v. Kansas*, 272 U. S. 306; *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245.

enforceable and to encourage a "reasonable alternative" to strikes over grievances, arbitration—march hand in hand.

Section 301 is the enforcement section. Its primary purpose was to give vitality to no-strike clauses (See the legislative history summarized in the *Lincoln Mills* case appendix, 353 U. S. at 533). Its language plainly does not limit the form of relief. Section 301(a) provides:

"Suits for violation of contracts * * * may be brought" etc.

Contrast this with the language simultaneously employed in Section 303(b), which permits suits by those injured by secondary boycotts. It provides:

"Whoever shall be injured in his business or property by reason of any violation of subsection (a) * * * may sue * * * and shall recover the damages by him sustained and the cost of the suit" (Emphasis added).

One need go no further than the contrasting language of these sections to see that Congress by Section 301 made either legal or equitable relief available, but under Section 303(b) authorized only legal relief. Labor's insistence on limitation of 303(b) to actions for damages is understandable:

The nature of the actions permitted by the sections is grossly different. An action under 301 can only be for breach of a contract freely entered into—and the section is as broad as it is long, either party can sue. Injunctive enforcement of their own promises poses no real threat to legitimate economic freedom of the parties. And labor was the first to resort to the injunctive remedy (*Lincoln Mills*).

On the other hand, 303 is a tort section—and a tort remedy in the boycott field—a field that always has defied clear definition. The section was not as broad as it was long; it ran solely against unions. And being concerned

with boycotts, it evoked emotional memories of a *bete noire* of labor, *Duplex Printing Press Company v. Deering*, 254 U. S. 443. Ample reason then to differentiate.

With respect to the advancement of arbitration, Section 201(c) declared that it is the policy of the United States that certain controversies may be avoided by making available governmental facilities for furnishing assistance to the negotiating parties "in formulating for inclusion within [collective] agreements provisions . . . for the final adjustment of grievances or questions regarding the application or interpretation of such agreements."

Section 203(d) provides:

"Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

The foregoing provisions are explicit. Their importance has been recognized by the Court in *Warrior, American Manufacturing*, and *Enterprise Wheel*.

The national policy so strongly favoring industrial arbitration was matured in the Labor-Management Relations Act of 1947, but it was far from being new. It had been recognized emphatically in Section 8 of Norris-LaGuardia. That section received full support by the Court in 1944 in *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Railroad*, 321 U. S. 50. It is that policy and the desirability, in the national interest, of avoiding strikes during the term of a freely bargained collective contract that should, we respectfully submit, determine this case.

The rationale for proper decision here is contained in the *Chicago River* opinion. Shortly after the *Chicago River*

decision Professor Gregory enunciated the following trenchant paragraph:

"Justice Douglas showed in the *Lincoln Mills* case that the equitable enforcement of collective agreements in general is beyond the reach of Norris-LaGuardia. Last year in the *Chicago River* case the Court held that recourse to direct strike action by a union is enjoined where Congress had provided an alternative method for handling grievances. The Railway Labor Act has no special provision relaxing the anti-injunction law. I think a contract provision for arbitration, whether or not there is a no-strike clause, might be held as analogous to the congressional provision for handling grievances in that situation. There is a strong federal policy to promote the making of collective agreements and to require compliance with them. Pursuant to this policy, I think the courts should enjoin strikes to enforce grievances even in the absence of no-strike pledges. The *Chicago River* case certainly suggests this result." (Charles O. Gregory, "The Law of the Collective Agreement," 57 *Mich. L. R.* 635 (1959). For similar views, see for example Cox, "Current Problems in the Law of Grievance Arbitration," 30 *Rocky Mt. L. R.* 247 (1958); Hays, "The Supreme Court and Labor Law, October Term, 1959," 60 *Col. L. R.* 901, 918 (1960); Stewart, "No-Strike Clauses in the Federal Courts," 59 *Mich. L. R.* 673 (1961), to mention but a few.)

Indeed, for at least three reasons, Count III of the complaint at bar presents a stronger case for inapplicability of Norris-LaGuardia and for the issuance of an injunction than did *Chicago River*.

First, here we have an unquestioned voluntary, express covenant not to strike given almost contemporaneously with the walkouts which followed it. In *Chicago River* there was no express covenant not to strike. The Court found that the promise not to strike was inherent in the

position the Railroad Brotherhoods had taken when they secured the 1934 amendments of the Railway Labor Act.

Second, in the case at bar we have an exceptionally strong, but voluntarily granted, grievance procedure. The contract at bar says that alleged grievances “must” be submitted to the grievance procedure. There is no equivalent mandatory language in the Railway Labor Act.

Third, Chicago River, decided under the Railway Labor Act, was without the aid of the emphatic provisions of Sections 301, 201, and 203 of the National Labor Relations Act.

Just as the Court said in *Chicago River* (p. 42) that “both [Norris-LaGuardia and Railway Labor] were adopted as a part of a pattern of labor legislation” so it necessarily must be said here that “both [Norris-LaGuardia and the Labor-Management Relations Act of 1947] were adopted as a part of a pattern of labor legislation.” And the Labor-Management Relations Act of 1947 speaks more strongly for the principles enunciated in the *Chicago River* decision than does the Railway Labor Act.

Relating the principles of the legislation and judicial decisions we have referred to in this point to the facts of this record, we find:

1. The contract was in full accord with the national policy: it provided (a) there should be no strikes and (b) alleged grievances “must” (R. 19, p. 31 of contract) be handled through a grievance procedure culminating in compulsory arbitration.

2. The parties clearly provided a “reasonable substitute” (cf. *Chicago River* at p. 41) for strikes as a means of determining grievances during the term of the agreement.

3. This case, in the field of general industry subject to the National Labor Relations Act, is the counterpart of *Chicago River* in the railroad field. In the railroad

field employees *may* take grievances ("minor disputes") to the Railroad Adjustment Board. In this case employees *must* take grievances, if they believe them valid, into a grievance procedure terminating in arbitration. Every reason of policy that required the *Chicago River* decision, and the desirability of symmetry in the basic labor law of the country, require a like decision here. It would be a disservice to the nation, a frustration of Congressional intent, and a shocking discrimination against railroad employees to hold that they may be enjoined from striking during the terms of their contracts, but that industrial employees may not similarly be enjoined even though they have expressly contracted not to do so.

IV.

IF THE NORRIS-LA GUARDIA ACT WERE CONSTRUED TO PERMIT INJUNCTIVE ENFORCEMENT AGAINST EMPLOYERS OF THEIR COVENANT TO ARBITRATE BUT TO FORBID INJUNCTIVE ENFORCEMENT AGAINST EMPLOYEES (AND THEIR ORGANIZATIONS) OF THEIR CORRELATIVE COVENANT NOT TO STRIKE, SUCH CONSTRUCTION WOULD RENDER THE ACT UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

This point may be shortly stated:

The proponents of Norris-LaGuardia were not seriously worried over an attack on its constitutionality on the theory that it denied employers equal protection of the laws. The proponents were persuaded, first that the "equality" clause of the Fourteenth Amendment does not limit Congressional but only state legislation." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220. Secondly, that it was "hardly to be assumed that the application given in *Truax v. Corrigan* [257 U. S. 312], to the equal protection clause of the Fourteenth Amendment will be imposed upon the due process clause of the Fifth Amend-

ment" (*Ibid.*). *Truax v. Corrigan* was criticized on the general ground that Mr. Truax, an employer and operator of a restaurant in Arizona, was not treated disparately by Arizona with relation to other employers, whether owners of restaurants or otherwise. In brief, it was argued that *Truax v. Corrigan* improperly applied the equal protection clause of the Fourteenth Amendment, but that in any event that Amendment did not apply to the federal government, which therefore was free to withhold, by *Norris-LaGuardia*, the injunctive remedy from employers.

Whether the criticism of the application of the equal protection clause made in *Truax v. Corrigan* and the constitutional arguments originally advanced in favor of *Norris-LaGuardia* on this score were valid, need no longer be debated, for changed circumstances and the facts of this record now pose a deeper and more important constitutional question as to equal protection.⁴

Although the words "equal protection of the laws" do not appear in the Fifth Amendment, there always has been recognition that the spirit of those words inheres in the words "due process of law." *Truax v. Corrigan*, although pointing out the difference in the verbiage of the Fifth and Fourteenth Amendments, recognized also, and the fact never has been disputed, that

"Our whole system of law is predicated on the general fundamental principle of equality of application of the law." (257 U. S. at 332.)

Since *Truax v. Corrigan*, events have strengthened the foregoing observation:

First, when this Court held in the *Labor Board Cases*, 301 U. S. 1, and in the Social Security Act cases (*Helvering v. Davis*, 301 U. S. 619, and *Steward Machine Co. v. Davis*,

4. "While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning." *Sweezy v. New Hampshire*, 354 U. S. 234, 266.

301 U. S. 548) that local manufacturing fell within the commerce clause and that the welfare clause was a grant of legislative authority, it sanctioned the entrance of the federal government into the intimate and daily affairs of the national citizenry to an extent theretofore unknown. It scarcely could be said with honor that the Court would permit the federal government to enter into such delicate and detailed fields with a less fastidious obligation of equal treatment of citizens than the Constitution required of state governments.

Secondly, when the problem of racial discrimination arose in public schools, it was solved for the forty-eight states in *Brown v. Board of Education*, 347 U. S. 483, under the equal protection guarantee of the Fourteenth Amendment. However, the Fourteenth Amendment did not apply to the District of Columbia. Yet, in *Bolling v. Sharpe*, 347 U. S. 497, racial discrimination was held as invalid in the District of Columbia under the due process clause of the Fifth Amendment as it was so held in the states under the equal protection clause of the Fourteenth. In short, although the Court pointed out in *Bolling v. Sharpe* that the two phrases "equal protection of the laws" and "due process of law" are not always interchangeable, it nevertheless recognized that it would be "unthinkable that the same Constitution would impose a lesser duty on the Federal Government" than it did upon state governments. *Bolling v. Sharpe* has read "equal protection of the laws" into the Fifth Amendment for all time.

In short, by the course of events, the concept of equal protection of the laws is now as binding on the Federal Government as it is on state governments.

If discrimination on the ground of race is equally obnoxious to the Fifth and Fourteenth Amendments, we respectfully suggest it follows that discrimination upon the basis of economic class, or discrimination between em-

ployees upon the basis of whether they are employed in general industry or in the transportation industry, is equally obnoxious to the Fifth Amendment. The application of those postulates to this case is clear:

This Court has held that employees in industries governed by the Railway Labor Act may be enjoined from striking over grievances, *Norris-LaGuardia* to the supposed contrary notwithstanding (*Chicago River*).

This Court has held that contracts by which employees in general industry agree not to strike and employees agree to accept the results of arbitration decisions as to grievances during the term of a contract may, at the instance of the employees, be enforced by injunctions against employers compelling them to arbitrate, *Norris-LaGuardia* to the supposed contrary notwithstanding (*Lincoln Mills*).

The double discrimination and double unequal protection of the laws that would result if it were held that industrial employees could not, unlike their brothers in the railroad industry, be enjoined from striking during the terms of their contracts, and that employers could not have injunctive enforcement of the *quid pro quo* no-strike covenant of the identical contract of which the arbitration provisions are specifically enforceable, is manifest.

Or stated another way, if an injunction against industrial employees may not be entered under the circumstances here shown then railroad employees would be discriminated against and denied equal protection; employers would be discriminated against and denied equal protection for they would be denied the effective enforcement of the *quid* which employees are allowed of the *quo*.

With *Norris-LaGuardia* construed as it now is construed viz., not to forbid injunctions in railroad "minor disputes" and not to forbid injunctions requiring employers to arbitrate grievances, it is a matter of constitutional neces-

sity that it be held not to preclude injunctions enforcing no-strike covenants. Any other holding would, we submit, render Norris-LaGuardia obnoxious to the concept of equal protection of the laws which inheres in the Fifth Amendment.

V.

THE LEGAL REMEDY IS INADEQUATE. THE INJUNCTIVE REMEDY IS SOCIALLY PREFERABLE.

There can be no serious question on this point but its growing importance should not be overlooked. As we have seen, it was recognized pre-Norris-LaGuardia that the legal remedy was inadequate. The reasons are manifold:

In a long strike involving many employees damages can become, to common knowledge, very high indeed, yet the difficulties of proving them precisely are insurmountable. In a strike in which the business is only temporarily discommoded accountants can wrangle endlessly over what items of loss and cost are attributable to the strike and what are not. Loss of customer confidence in the ability of the employer to furnish his product on time, from which stems future losses of business, although a well known fact, is extremely difficult of legal proof. The diversion of managerial employees from productive pursuits into efforts to settle a walkout again is a loss difficult of precise evaluation. These are only some of the problems inherent in the legal remedy.

More important to the nation than problems of proof of damages is that a damage action after an event does not secure tranquillity of uninterrupted production that is the goal of Congress. What the country wants is performance of the no-strike pledge—not damages to the employer in lieu thereof. And damages to the employer, even assuming they can be assessed adequately, in no way recompense

the non-assenting innocent employees who are dragged into, or idled by, nearly every illegal strike.

The injunction, which stops the wrong and contains the damages, is a far more merciful and beneficent remedy than a damage award entered long after the sorry event.

In the case at bar the fact that the *ad damnum* in the law counts was placed at only \$12,500 should deceive no one into thinking that such was the full extent of the employer's loss from the February 1959 stoppage. The *ad damnum* was placed at that low figure to demonstrate that the employer was not out to "break" the union, but simply to secure responsibility. It was also placed at that low figure so that, upon trial, the employer could readily prove up the stated amount through items as to which there could be no possible legal controversy.

A no-strike covenant is a negative covenant. Negative covenants historically have been favored subjects for specific enforcement, for in no other way can the beneficiary of such a covenant obtain what he really bargained for.

The problem of illegal strikes is important. A recent study indicates that some form of no-strike clause appears in about 94% of union contracts.⁵ According to the same source, 91% of such contracts contain enforceable arbitration provisions and an additional 3% permit arbitration by mutual agreement.

The foregoing statistics demonstrate that the public policy of encouraging settlement of a grievance by arbitration has been implemented so far as employers are concerned, not merely on paper, but in reality through this Court's decisions in *Lincoln Mills*, *Warrior* and similar cases. However, the availability of arbitration has not

5. *Basic Patterns in Union Contracts*, Bureau of National Affairs, 1961, p. 77:1.

brought about adherence to the correlative no-strike clauses. This case is a startling example, for Count III shows that in the period of 19 months this plant suffered 9 illegal strikes, some of them of considerable severity, and all over matters which could have gone to arbitration.

There are no definitive statistics as to the numbers of illegal strikes. The most recent study of the Bureau of Labor Statistics concluded that 24.1% of the workers involved in strikes in the last half of 1960 were involved in "disputes arising during the term of the agreement." (*Analysis of Work Stoppages 1960*, Bulletin No. 1302, Bureau of Labor Statistics (1961), p. 5.) That figure does not include strikes arising out of legitimate "wage reopeners" during the term of a contract nor does it include work stoppages involving less than 6 workers or not lasting a full shift or longer. Since many so-called wildcat strikes last for only a few hours and are settled by some accommodation of the strikers, there are necessarily a great many that are not included in the Bureau of Labor Statistics computation.

A student recently has reported that in such basic industries as steel, automobiles and rubber every company has faced the issue of wildcat strikes in serious proportions during the last 20 years.⁶ This case proves the oil industry has not been immune. The same authority reports that a recent survey of over 150 important companies revealed that 60% of them listed wildcat strikes as their most important recent labor problem.

Another writer reports:

"With this growing maturity we might well expect that the most unrestrained and least disciplined weapon in an industrial power struggle—the wildcat strike—would completely disappear. * * * Yet the

6. "Taming Wildcat Strikes," Mangum, *Harvard Business Review*, March-April 1960, p. 88.

wildcat strike has not disappeared, nor is there any evidence that it will in the foreseeable future." ("Wildcat Strikes," Sayles, *Harvard Business Review*, November-December, 1954, p. 42.)

Professors Slichter, Healey and Livernash of Harvard conducted a three-year study under the sponsorship of the Brookings Institution resulting in a book published in 1960 entitled *The Impact of Collective Bargaining on Management*. They report at page 663:

"Wildcat strikes, that is, strikes in violation of contract, and other union pressure tactics have not been sufficiently recognized as a distinct and important aspect of the development and evolution of union-management relations. * * *

"An open question is whether the use of force, direct and indirect, in contract administration has not been more significant than have strikes over the negotiations of contracts. Actually no accurate measurement of such influence can be made, but it is clear that certain plants and companies have become noncompetitive not through concessions granted in negotiation but through the cumulative effect of concessions granted in contract administration."

The sum of the matter is that the lay investigators of the subject have all reported that the problem is serious, that the various self-help remedies of discharge and layoff are difficult of application because of the problem of distinguishing between the leaders of such illegal activities and those who were merely swept along with the tide. It is obvious that these remedies do not work for if they did the problem would have disappeared.

It is respectfully suggested that from the point of view of national stability the most effective remedy, and the one which does the least harm to the future relations of the parties, is the injunction, which stops the trouble before it progresses too far.

BRIEF IN NO. 430.**QUESTIONS PRESENTED.**

1. Does Section 301 of the Taft-Hartley Act extinguish the right of employers to sue individual employees for inducing breaches of union contracts, for breaching their individual contracts, and for inducing other employees to breach their individual contracts?
2. Does the contract contain a waiver by the employer of its right to sue and a promise by it to submit to arbitration any claims, tort or contract, which it may have against the union or individual employees arising out of breaches of the promises (a) not to strike over, but (b) to arbitrate asserted grievances against the employer?
3. Does a union which, to the damage of an employer, violates both the arbitration and no-strike clauses of a contract with it, have standing to insist that its conduct in that regard be adjudicated in arbitration rather than in a Federal District Court pursuant to the provisions of Section 301 of the Labor-Management Relations Act of 1947?

STATEMENT OF CASE.

We are in violent disagreement with defendants' assertions: that following the work stoppage of Feb. 13-14, 1959, the employer invoked disciplinary action against 12 of the 24 individual defendants; that the local union has denied that these allegedly "disciplined employees" were responsible for the work stoppage; and that an arbitration is presently pending to determine all of these matters and also, presumably, the remedy which the employer

should be afforded because of the breach of the no-strike clause. Those assertions, which form the predicate for much of defendants' brief, cannot be supported in the record.

There is nothing showing that any employees were disciplined for participation in the strike (and they were not), or that there is any arbitration pending (under the contract provisions or otherwise) that will settle the questions raised by this action or afford plaintiff the relief which only a court can give. The true nature of the written grievances which were filed is quickly resolved by examination of them (R. 33-41). None refer to the strike, nor do they allege that anyone was disciplined. The sole subject matters of the grievances are claims for "Loss of Time" or "Loss of Pay" (R. 37-41).

Despite the assertion in defendants' motion to stay that none of the defendants failed to follow the procedure for settlement or arbitration of grievances there actually is no dispute but that they did fail so to do. The work stoppage did occur on February 13-14, 1959 (defendants' brief so admits), the asserted grievances which were the subject matter of the strike ("docking" three men the aggregate sum of \$2.19 for being late) were not filed until more than two weeks after the strike—March 4, 1959 (R. 35-36).

The assertions of the motion to stay are circumscribed by its supposedly supporting affidavit of Tyler Swanson (R. 24-25), which attempts to characterize certain other grievances which were filed at various times after the stoppage, and some after this action had been instituted. Swanson failed to attach copies of these grievances. The incorrect assertion of his affidavit that the parties "are presently agreed to submit the issues raised in the Complaint" to arbitration (R. 23, Par. 3) is contradicted by the counteraffidavit of Robert D. Clark (R. 33-34), which is validated by attachment of the actual grievance forms (R. 35-41).

The Clark affidavit and attachments completely refute Swanson's conclusions. They show:

The three riggers, whose claim that they had improperly been docked 15 minutes' pay precipitated the walkout, did not file grievances for their pay until March 4, 1959, more than two weeks after the strike (R. 33).

The other grievances filed by 14 of the 24 individual defendants do not allege any "discipline" but simply advance claims for "loss of pay" or "loss of time" for performance of regular work duties on February 13, and, in some cases, February 16, 1959 (R. 33-34, 37-41). One of the grievances also asserts that the 7 grievants therein are entitled to pay on February 13 and 16 for performing regular work and for "processing grievances" (R. 34, 38).

It is apparent that a decision as to whether the three riggers were docked 15 minutes' pay properly will not settle any of the issues in this case. It is apparent likewise that if in an arbitration it were established that any of the other grievants had performed regular work, or proper union activity, on February 13 or 16 for which they were not paid, that no issue in this case would be resolved.

SUMMARY OF ARGUMENT

Count II States a Valid Cause of Action Against the Individual Defendants For Their Individual Acts Which Were Both Breaches of the No-Strike Clause and Were Common Law Torts Because:

The individual defendants are bound by the provisions of the collective contract. In addition, the individual defendants are under a duty not to induce other employees or their union to breach the collective agreement. The brief of the AFL-CIO herein which argues (p. 19) that individual employees should have all the benefits of a collective contract, but that its no-strike clause should not be regarded as "an individual obligation binding on employees who may engage in a wildcat strike or other peaceful work stoppage" does violence to contract law and is a shocking invitation to industrial anarchy. A promise not to strike is wholly valueless unless it is binding upon the employees covered by the contract as well as their union for there may be strikes without the participation of the bargaining representative, but there can never be a strike without employee participation.

Count II was embodied in the complaint because of the probability that the unions in answering Count I will assert that the strike was the result of solely *individual* activity which created no union liability.

Defendants' argument that because Section 301 created a right to sue a union for breach of contract it thereby extinguished the right to sue individual tortfeasors or individual contract breakers is an obvious *non sequitur*. Section 301 was passed on the assurance that it destroyed no existing remedies but created a simple method for suing a

union in contract and satisfying any judgment recovered out of union rather than individual assets.

Defendants further argue that because, in a certain limited class of cases under the New York minority view, officers or agents of a corporation cannot be sued for inducing corporate breaches of contract, union officials should not be held responsible for inducing union breaches. This is unsound: *first*, because Section 301 did not purport for all purposes to make a union the equivalent of a corporation; *second*, because this view is a minority view which is repudiated in most jurisdictions; and *third*, because even in New York if a corporate officer acts maliciously and for no proper purpose, as it is alleged and admitted the union officials did here, he may be sued.

Defendants' various other objections to the imposition of individual liability for individual derelictions are without merit: Extinguishing individual liability would have the effect of undermining Section 301 because: (a) employer inflicted discipline is not an effective remedy for wildcat strikes, nor does it make an employer whole; and (b) covert breaches by the union could rarely be proved.

The National Labor Relations Act does not pre-empt the jurisdiction of Federal or State Courts to decide actions for breaches of a collective agreement.

Damage actions against individuals for breaches of their commitments under a no-strike clause implement the policy of Section 301.

Damage actions against individual employees will not undercut a union's right of "exclusive representation" but will fortify it; nor will such actions detract from the uniformity of Federal Law.

The Action Should Not Be Stayed Because :

This lawsuit is precisely the type which Section 301 of Taft-Hartley was intended to make available to cure the exact breach complained of. Since 1947 parties who wished to limit union liability for breach of no-strike clauses have known how to do so; such was not done here.

One cannot be compelled to arbitrate a question unless he has agreed to. The contract here does not contain any promise by plaintiff not to sue, but to arbitrate, claims against the union or individual defendants.

The grievance and arbitration procedures of this contract could not be set in motion by the employer and the contract does not contemplate that the employer must obtain the consent of the grievance committee before disciplining employees who are late for work, or that it must submit claims for damages arising from violation of the no-strike clause to arbitration.

Under this contract the employer has the right, subject to the restrictions of the contract, to run the business. When the right to manage allegedly has been exercised in violation of some provision of the agreement, a "grievance" may be presented by or on behalf of employees. The employer does not have to go through the grievance procedure before making a managerial decision, here to dock three employees; however, it makes that decision subject to corrective action if it acts erroneously.

Nor does the contractual "Grievance and Arbitration Procedure" contain any provisions for the processing of employer grievances or by which the employer might initiate arbitration.

Even if plaintiff had a right to initiate grievances or arbitrations against the union or its members, defendants would have no standing to stay the suit and insist on such

arbitration because they first spurned the grievance procedure and violated both the arbitration and no-strike clauses of the contract, thus depriving the employer of the only consideration it had for entering into the contract, frustrating the purpose of the agreement, and waiving their right, if any, to insist upon arbitration.

There is no support whatsoever in the record for the assertion that plaintiff and defendant have (wholly apart from the contract) entered into a valid and binding submission agreement to refer the damage claims advanced in the complaint to arbitration. Defendants' unilateral acts in filing grievances of any nature cannot create and do not constitute such a submission agreement.

ARGUMENT.

I.

COUNT II STATES A VALID CAUSE/OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS FOR THEIR INDIVIDUAL ACTS WHICH WERE BOTH BREACHES OF THE NO-STRIKE CLAUSE AND COMMON LAW TORTS.

Count II names as defendants 24 of plaintiff's employees (all of whom were also union committeemen) who, in violation of their individual obligations, fomented, caused and participated in this strike (R. 12-14).

The complaint was framed with Count I against the unions and Count II against the individuals because of the fact that unions frequently deny responsibility for wild-cat strikes, claiming that such stoppages are "spontaneous" or caused by a dissident faction within the union. That a strike did occur and that someone was responsible for it is a verity.

Here, it may fairly be assumed the unions ultimately may assert that the activities of the committeemen and other employees were not union action and do not create union liability. Counts I and II are alternative, not only because plaintiff could not recover damages twice for the same breach, but also because the theories of the counts are different. If the strike was caused by the unions, plaintiff should recover under Count I; if, on the other hand, the activities of the individual defendants are shown to have been solely individual activity, then plaintiff is entitled to recover from the individual defendants. Possibly the facts on trial may show liability under both counts.

The validity of Count II raises the following questions:

(1) Are the employees covered by a collective bargaining agreement under a duty to abide by its terms, including the no-strike and arbitration provisions? (2) Does the complaint allege a violation of these duties? and (3) Would an award of damages against the individual defendants conflict with the provisions of the Labor-Management Relations Act, 1947?

A. The Individual Defendants Had a Duty Not to Foment, Cause or Participate In a Strike.

The AFL-CIO advances a proposition that, if accepted, would be destructive of all real responsibility under collective agreements, or enforceability of them. It asserts that the no-strike obligation of a collectively bargained contract should not be treated "as an individual obligation binding on employees who may engage in a wildcat strike or other peaceful work stoppage" (Br. p. 19). Acceptance of this proposition, or any substantial part of it, would do the country immeasurable harm. With the individual *right* to select a bargaining agent and to secure benefits through it must go the individual *duty* to accept correlative obligations created by or arising from the contract the collective agent makes on behalf of the individual employees.

1. The Individual Defendants Had an Obligation Not to Breach the No-Strike Clause of the Contract and a Further Contractual Duty Not to Induce Such Breaches by Others.

Under Section 9(a) of the National Labor Relations Act (29 USC Sec. 159) the collective bargaining agent is empowered to make a collective bargaining agreement for all employees in the bargaining unit (supposedly conferring innumerable benefits on them) which is binding on them "in respect to rates of pay, wages, hours of employment, or other conditions of employment", and which be-

comes a part of each employee's individual contract with the employer. The power thus granted is "exclusive" and precludes individual employees, whether members of the union or not, from adjusting a grievance with their employer in a fashion "inconsistent with the terms of a collective-bargaining contract" (*Ibid.*).

There has been much theorizing as to whether, in strict legal theory, the individual employee becomes a third party beneficiary to the collective contract or whether the collective contract, though not signed by or naming the individuals, is one directly between the employer and them negotiated by their collective agent. This Court has discussed these, and other theories in *J. I. Case & Co. v. N. L. R. B.*, 321 U. S. 332, and in *Ass'n of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437. It is not necessary, for the purposes of this case, to debate these theories, for it is uniformly agreed that the collective contract, on whatever theory, runs to, and binds, the individual employee. Thus, in *J. I. Case & Co. v. N. L. R. B.*, 321 U. S. 332, 335, the Court said:

"After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge. *But the terms of the employment already have been traded out.* There is little left to individual agreement except the act of hiring. * * *

"* * * *The individual hiring contract is subsidiary to the terms of the trade agreement* and may not waive any of its benefits, any more than a shipper can contract away the benefit of filed tariffs, the insurer the benefit of standard provisions, or the utility customer the benefit of legally established rates." (Emphasis added.)

The Court of Appeals for the Third Circuit said in the *Westinghouse* case (210 F. 2d 623, 627):

"The terms of the collective contract thus become part of the individual contract of employment * * *."

In *N. L. R. B. v. Cummer-Graham Company*, 5 Cir., 279 F. 2d 757, 759, the court said:

"Labor organizations, while engaged in collective bargaining, both while the bargain is being negotiated and when it has been agreed upon and is being closed, act in a representative capacity and on behalf of the employees in the bargaining unit. The employees are the real parties in interest. They are, in a very real sense, parties to the agreement whether or not it be so recited."

State courts, by a variety of reasons, reach the same result, namely that the individual has the benefit of, and is bound by the collective agreement. Thus, *Young v. Klausner Cooperage Company*, 164 Ohio 489, 132 N. E. 2d 206, was a suit brought by a former employee to recover a retroactive wage increase after having walked out in violation of the no-strike clause. The court held plaintiff's breach prevented recovery, saying (p. 208):

"* * * plaintiff as a union member was represented by his union in the agreements made by it and defendant, and *was bound by their terms* * * * Plaintiff breached the [no-strike] agreement by striking on March 27, 1952, before the retroactive wage increase was authorized * * * This deliberate and wilful conduct on his part operated as a forfeiture of the additional pay to which he might otherwise have been entitled." (Emphasis added.)

The New Jersey Supreme Court in *Owens v. Press Publishing Company*, 20 N. J. 537, 120 A. 2d 442, said (p. 448):

"In sum, it is said that the common law 'imports an individual contract of employment wherever there is an employer-employee relationship,' and each plain-

tiff (employee) 'had an individual contract of employment which embodied as conditions of employment the provisions of the collective bargaining contract,' (citing cases)."

In *McLean Distributing Company v. Brewery and Beverage Drivers, et al.*, 254 Minn. 204, 94 N. W. 2d 514, cert. den., 360 U. S. 917, the court observed (p. 525):

"In dealing with a contract between an employer and a union, acting as an exclusive bargaining agent for all employees of such employer, it is necessary to have in mind the nature of such agreement. To begin with, the union acts as the agent for the employees presently employed, and *they are as much bound by the contract executed in their behalf by the union as if they had executed it themselves.* Where, as here, the contract covers all employees in a designated category and gives to the employer the right to secure and hire new employees after the execution of the contract, such new employees, as they are hired, must be held to have accepted the terms of the contract under which they are employed so as to be bound by it as much as if they were so employed when the contract was executed. *In other words, by accepting employment under a contract, they adopt and ratify the terms thereof.* They cannot accept employment under the terms of an existing contract and at the same time secretly repudiate it." (Emphasis added.)

See also *Ford Motor Co. v. Huffman*, 345 U. S. 330; *Lamon v. Georgia Southern & Florida Railway Co.*, 212 Ga. 63, 90 S. E. 2d 658 and *Whiting Milk Companies v. Grondin*, 282 Mass. 41, 184 N. E. 379, showing how seriously a collective contract may affect the rights and obligations of individual employees.

In the instant case the Court of Appeals concluded:

"Whether these individuals are regarded 'somewhat as' third party beneficiaries to the collective contract or that contract, though not signed by or naming them,

is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire, they are bound by its provisions. * * * And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so." (R. 73.)

To that we would add this observation: A promise not to strike is wholly valueless unless it is binding upon the employees covered by the contract as well as their bargaining representative. Only employees may strike: a union may "call a strike", but there can be none without employee participation. Conversely, there may be strikes without union participation, but there cannot be a strike without employee participation.

Despite the sweeping position taken by the AFL-CIO we do not understand defendants themselves seriously to controvert the proposition that the individual employee is bound by the collective agreement. Defendants concede:

"We do not quarrel with the contention that the relationship of members of a bargaining unit to their employer, are governed by the bargaining agreement entered into on their behalf by their union." (Br., p. 60.)

Nevertheless, as we show below, both defendants and the AFL-CIO seek to prevent any enforcement of these duties.

2. Under the Common Law of Indiana, Inducement of Breach of Contract Is Tortious.

Wholly apart from the obligations placed upon them by the collective agreement, the individual defendants had a duty not to induce plaintiff's employees to breach their obligation not to strike. The Court of Appeals concluded:

"In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley v. Gye*, 2 E1. & B1. 216, 118 Eng. Reprint 749, recognizes liability for malicious interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is [fol. 181] a party to the contract. *Wade v. Culp*, 107 Ind. App. 503, 23 N. E. 2d 615.

"Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations." (R. 74.)

The Court's holding is fully in accord with Indiana law. *Jackson v. Stanfield*, 137 Ind. 592, 37 N. E. 14, 23 LRA 588. Neither in defendants' brief nor in the *amicus*' brief is there any question that the Court of Appeals correctly interpreted Indiana law.

3. The Duty Not to Interfere with Contractual Relations Is Also Applicable to Union Officers as Well as Members.

Defendants contend that Count II does not allege a cause of action based on the individual defendant's malicious inducement to secure the union's breach of the collective agreement. They assert that it is the law (in New York) that officers of a corporation (or union) may not be held liable for inducing the corporation (or union) to breach a contract, citing *Wilson & Co. v. United Packinghouse Workers of America*, N. D. Iowa, 181 F. Supp. 809 and *Hicks v. Haight*, 171 Misc. 151, 11 N. Y. S. 2d 912.

The two fundamental errors in this contention are (1) a voluntary labor organization is not the equivalent for all purposes of a corporation, and (2) not even in New York,

which is in the minority, is an officer or agent of a corporation immunized from all personal liability for his individual acts in inducing his principal to breach a contract. Defendants admit in their brief that an agent or officer of a corporation can be held individually liable for such tortious conduct when there is a showing that the motive was personal aggrandizement (p. 79). Decisions rendered after *Hicks* make it clear that even in New York if a corporate officer commits independent torts or predatory acts directed at another, he may not seek refuge behind the protective shield of his artificial principal.⁷

In *Ehrlich v. Alper* (*Ibid.*) the court noted that the New York view was contrary to other jurisdictions and attempted to explain the difference as follows:

"In other jurisdictions it has been held that officers of a corporation may be held liable individually for malicious inducement of breach of contract without a further showing either of personal profit or separate tort committed in conjunction with the breach, but in this state the authorities hold that plaintiff must allege and prove that one or the other of these conditions obtains." (145 N. Y. S. 2d at 252.)

As the Court of Appeals concluded, the District Court in *Wilson* erred in not only applying a minority view, mistakenly construed, concerning the liability of officers of corporations (and unions), but also was guilty of a *non sequitur* or of reasoning from a particular to a generality as is shown in *Baun v. Lumber and Saw Mill Workers*

7. *Remy Beverage, Inc., et al. v. Myer, et al.*, 269 App. Div. 909, 56 N. Y. S. 2d 828; *Ehrlich v. Alper*, 145 N. Y. S. 2d 252, *affd.* 1 App. Div. 2d 875, 149 N. Y. S. 2d 562; *Buckley v. 112 Central Park South*, 285 App. Div. 331, 136 N. Y. S. 2d 233; *A. S. Rappell, Inc. v. Hyster Co.*, 1 Misc. 2d 788, 148 N. Y. S. 2d 102; *Fletcher, Corporations*, Vol. 3, § 1,001; *Vassardakis v. Parish*, S. D. N. Y., 36 F. Supp. 1002; *Culbertson v. Ellis, et al.*, C. C. D. Ind., 6 Fed. Cases No. 3461; Restatement of Agency, 2d, Section 343. The New York view has been often criticized, *e.g.*, Comment, 48 Harv. L. R. 298 (1934); 45 Mich. L. R. 634 (1947).

Union, et al., 46 Wash. 2d 645, 284 P. 2d 275, in which the identical argument contained in *Wilson* was squarely rejected (284 P. 2d at 286):

“The law unquestionably is that in such a case as this the officers and members of a union or other similar unincorporated association are liable for acts which they individually commit or participate in or authorize or assent to or ratify (citing cases).

“We find no merit in the contention that the Labor Management Relations Act, 29 U. S. C. A. §§ 185 and 187, does not permit a judgment against the individual union member. What the statute relied on says (and it is limited to money judgments in district courts of the United States) is that a judgment against a labor organization shall not be enforceable against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur*.”

The complaint at bar alleges, and the motion to dismiss admits, that the individual defendants maliciously conspiring to cause the plaintiff expense and damage, to induce breaches of the collective contract, and to interfere with performance thereof, took various steps to foment the work stoppage. This allegation states a cause of action under the law of any state with respect either to corporate or union officials.

B. Count II Alleges Violations of the Various Duties Which the Individual Defendants Owed to Plaintiff.

This is clear from the original wording of paragraph 9 of Count II, which (*italics added*) is as follows:

“9. * * * the individual defendants and each of them, contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and

damage, and to induce breaches of the said contract, and to interfere with performance thereof by the said labor organizations *and the affected employees*, and to cause *breaches* thereof, individually and as officers, committeemen and agents of the said labor organizations, *fomented, assisted and participated in a strike* or work stoppage by approximately 999 of the approximate 1700 employees within the bargaining unit represented by the Local Union at said East Chicago refinery over asserted pay claims on behalf of three members of the said bargaining unit aggregating \$2.19, which asserted claims could, and, if valid, should have been the subject of a grievance under Article XXVI of the said contract" (R. 13).

To remove any doubt about the matter, plaintiff tendered an Amended Count II (R. 56-58) which specifically alleged that the collective contract formed a part of the individual contracts of the approximate 1700 employees in the bargaining unit (Par. 6), and specifically averred that there were breaches of approximately 999 individual contracts (Par. 9).

What is important is that the count in either form was not founded solely upon breaches by the unions of the collective contract or inducement of union breaches. Count II is far broader and alleges several quite distinct and well recognized legal bases of action:

- (1) That the individual defendants breached their own individual obligations under the no-strike clause by participating in the work stoppages.
- (2) That the individual defendants engaged in conduct which was both violative of the no-strike clause and tortious in inducing other employees to strike, and in conspiring together to do so; and
- (3) That the individual defendants engaged in conduct that was both in violation of the no-strike clause and tortious in inducing the unions to breach their obligation under the no-strike clause.

The Court of Appeals so interpreted Count II (R. 72-76), was manifestly correct in doing so, and we do not believe that defendants or *amicus* question the validity of this interpretation.

C. The Recovery of Damages from Individual Employees for Individual Breaches of Their Obligations Under a No-Strike Contract, or for Individual Interference with Such Contracts, Implements the Federal Policy of Promoting Labor Peace and Is a Necessary Concomitant of That Policy.

Defendants and the AFL-CIO protest that the traditional recovery of such damages as are due should not be allowed. They vehemently assert that such a remedy is "unnecessary" (AFL-CIO brief, p. 4), "radical" (*Id.* at p. 5), would not promote "healthy labor-management relations" (*Ibid.*), conflicts with our federal labor policy in a variety of ways (*Id.* at 8-13; Def. Br.), and that there is no such federal cause of action (Def. Br., p. 52).

Ultimately the AFL-CIO concludes:

"We therefore think it wholly consistent with these contractual theories to regard the no-strike clause as a collective obligation binding only on the union, and not as an individual obligation binding on employees who may engage in a wildcat strike or other peaceful work stoppage. Whether or not the union authorizes the strike should not affect the individual's freedom from personal liability." (p. 19.)

Although defendants are never quite so blunt, this is the essence of their position.

One would regard these arguments as facetious were they not so solemnly advanced. Stripped of euphemistic terminology, the position of the unions would reduce collective bargaining to a thinly veiled protection racket: all

the employer buys by entering into a collective bargaining contract—even though it contains the federally encouraged arbitration and no-strike provisions—is protection from an overt strike call by the union itself. The individual employees, in whose name the union purports to act, and from whom it presumably receives its power, remain free to extort whatever additional advantage they may for themselves, subject only to the risk of some mild disciplinary penalty.

A more cynical argument is difficult to imagine. Either a labor union speaks on behalf of those whom it represents, or it does not. Either bargaining is to be collective, or it is to be individual: it cannot be both at the same time. If a labor organization cannot or will not commit both itself *and the employees whom it represents* to the terms of a contract, its *raison d'être* has ceased to exist.

The brief *amicus* is helpful, however, to the Court and to the country, although in a way the authors may not have anticipated. While it sheds no real legal light, emanating from the apex of the hierarchy as it does, it is more convincing than anything we could say that sometimes promises of responsibility are but will-o'-the-wisps which vanish when one seeks to grasp them. The brief demonstrates that responsibility must be imposed: it will not willingly be borne where it entails pain.

An appreciation of the practical consequences of the union's evasive position makes the legal arguments which follow more understandable. The unions repeatedly refer to the fact that an employer has a right to discipline wildcat strikers, contending that the availability of such discipline renders damage actions unnecessary. A moment's reflection will demonstrate the absurdity of the proposition, and, simultaneously delineate some of the practical considerations which come into play in wildcat strike situations.

First, discipline, whether mild or severe, does not place the employer in the position he would have occupied if the employees had not violated their obligation not to strike: discipline does not make the employer whole. Only an award of damages can do so.

Second, any discipline greater than a reprimand may be impossible as a practical matter. In the instant case, the complaint alleges that the work stoppage giving rise to this lawsuit involved 999 of the 1700 employees within the bargaining unit (R. 13). One of the previous stoppages involved three entire departments (R. 15); another involved 800 employees (R. 16). It is readily apparent that the discharge or layoff of any substantial number of employees involved in these layoffs would have had the necessary effect of shutting down the refinery.

This leads to the *third* problem connected with using discipline as a remedy for wildcat strikes. Discharge or discipline of any substantial number of wildcat strikers necessarily penalizes the employer and the enterprise by depriving it of a part of its work force. In effect, discipline merely legalizes the employee's absence from work for an additional period of time. The recent hearings over the rash of strikes at missile bases have revealed a glaring example of this point. Senator McClellan stated:

"Many of these work stoppages were deliberately called to create the need for overtime work. The testimony has shown that both the unions and men knew the scheduled target dates had to be met and that postponing the work would necessitate lucrative overtime if the jobs were to be finished on time." (91 Daily Labor Report [1961] F:1; May 11, 1961.)

Fourth, insofar as discharges are involved, there is no necessary correlation between the punishment to the employee and the amount of damage which he has caused. For example, in the instant case the *ad damnum* is \$12,500,

and there are 24 individual defendants. A full recovery, equally divided, would impose a liability of about \$520.00 on each individual defendant. However, if each had been discharged, his loss in future earnings, pension and other welfare and fringe benefits would be far in excess of that amount. Obviously a damage action may be a far milder remedy than discipline.

When one realizes the inadequacies of discipline as a remedy for wildcat strikes, it is clear that the objective of defendants and the AFL-CIO is an attempt to emasculate Section 301. They seek nothing less than a license for their members to commit wildcat strikes. If this objective were ever achieved, it would be a very stupidly led union indeed that ever ran any risk of liability for breaching its no-strike commitment.

Once the unions' ultimate objective is unmasked, the plethora of arguments advanced in behalf of these contentions are easily dealt with. No matter how ingenious they appear at first blush, they are too frail to support the massive objective sought.

As best we understand it, the unions assert that Count II is invalid because it conflicts with federal labor policy in the following respects: (1) since the individual defendants' activities may have been "protected" under the National Labor Relations Act, common law tort actions have been extinguished under the doctrine of *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (Def. Br., p. 65; AFL-CIO Br., pp. 13-16); (2) that Section 301 does not allow for, or permit, suits against individual employees and therefore extinguishes any such cause of action which may have existed at common law (Def. Br.; AFL-CIO Br. pp. 8-13); (3) that permitting damage actions against individual employees would permit individual settlement of such suits, thus undercutting the right of defendant unions

to act as the "exclusive" bargaining representative under Section 9(a) of the Act (AFL-CIO Br. p. 12); and (4) that recognizing state causes of action against individual employees will destroy the uniformity of federal labor policy (Def. Br.).

We deal with these contentions below.

1. The National Labor Relations Act Does Not Pre-empt the Jurisdiction of Federal or State Courts to Decide Actions for Breaches of a Collective Bargaining Contract.

This Court has recently made it clear that "the pre-emptive doctrine of cases such as *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, based upon the exclusive jurisdiction of the National Labor Relations Board, is not relevant" in suits for violation of a collective bargaining contract. *Local 174, Teamsters v. Lucas Flour Co.* (October Term, 1961, No. 50) U. S., fnt. 9. "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law'." *Dowd Box Co. v. Courtney*, 368 U. S. 502, 513.

2. Whether or Not Specifically Authorized by Section 301, Damage Actions Against Individuals for Breaches of a No-Strike-Arbitration Agreement and Inducement of Similar Breaches by Other Employees Under Similar Obligation, Are Compatible with It and Implement, Rather Than Frustrate, the Policy Which It Expresses.

Defendants flatly assert that Section 301 "allows neither a suit by or against an individual for breach of a collective bargaining contract" (Def. Br., p. 54). Section 301 does not so read. It is not restricted to suits between an employer and a labor organization. Rather, it authorizes "[s]uits for violation of contracts between an employer and a labor organization" (Sec. 301(a)).

Although Count II is founded upon individual causes of

action, it is precisely the type of suit authorized by Section 301. In any event Count II is fully consistent with the policy explained in Section 301 and other provisions of the Act, will not frustrate its purposes, but will implement them.

In *Baun v. Lumber & Saw Mill Workers Union*, 46 Wash. 2d 645, 284 P. 2d 275, a \$10,000 judgment against a union and certain of its officers and members for conspiracy that effectuated a wrongful discharge of a mill superintendent was reversed solely because of an incidental erroneous instruction. The individual union members advanced the identical argument advanced here. The Supreme Court of Washington squarely rejected it, stating:

"We find no merit in the contention that the Labor Management Relations Act, 29 U. S. C. A. § 185 and 187, does not permit a judgment against the individual union member. What the statute relied on says (and it is limited to money judgments in the district courts of the United States) is that a judgment against a labor organization shall not be enforceable against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur*" (284 P. 2d at 286).

The following examination of the legislative history of Section 301 clearly demonstrates the correctness of *Baun* and of the Court of Appeals below:

Prior to adoption of Section 301, the law in many states was that unions, being merely voluntary associations, could not be sued as entities. See for example *Pullman Standard Car Manufacturing Co. v. Local Union*, 7 Cir., 152 F. 2d 493. And where an action for union misconduct could be maintained by suit against all or some of the members, the judgment, in at least some states, could be satisfied out of the personal assets of the particular defendants even though they had not participated in, or endorsed the ac-

tivity that was involved. (See the history of *Loewe v. Lawlor*, 208 U. S. 274, the so-called *Danbury Hatters* case, where there was a judgment for \$250,000 and attachments were issued against the goods and estates of more than 150 named defendants, referred to in Justice Frankfurter's dissent in *Lewis v. Benedict Coal Corp.*, 361 U. S. 459, 473).

Section 301 was designed merely to cure the twin evils of union non-suability and individual responsibility for non-authorized conduct by (a) making unions suable as entities (on contracts) in Federal Courts, and (b) limiting satisfaction of judgments in such suits to the assets of the union. At the time the law was adopted both its proponents and opponents repeatedly declared that such (and such only) were its objectives and that it did not change or destroy other rights.

In discussing an amendment to the Case bill which was similar to Section 301, Senator Taft stated:

"What good is a collective-bargaining agreement if people are not bound by it? If there is a collective-bargaining agreement and the men are bound by it, they ought to carry it out. If the union wants to carry it out, and some of the men say, 'We will not do it,' *they ought to be liable*. This provision applies only if the action of the individual is a violation of the collective-bargaining agreement." (92 Cong. Rec. 5706; quoted at 353 U. S. 504; emphasis added).

Senator Taft, in the course of the debates over Taft-Hartley, stated on April 23, 1947 that:

"Mr. President, title III of the bill, on page 53, makes unions suable in the Federal courts for violation of contract. As a matter of law unions, of course, are liable in theory on their contracts today, but as a practical matter it is difficult to sue them. They are not incorporated; they have many members; in some States all the members must be served; it is difficult to know who is to be served. But the pending bill pro-

vides they can be sued as if they were corporations and if a judgment is found against the labor organization, even though it is an unincorporated association, the liability is on the labor union and the labor-union funds, and it is not on the individual members of the union, where it has fallen in some famous cases to the great financial distress of the individual members of labor unions" (93 Cong. Rec. 3955).

Senator Smith, on April 30, 1947, also stated that:

"I now come to title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying out contracts legally entered into as the result of collective bargaining. *That is all title III does*" (93 Cong. Rec. 4410; emphasis added).

Senator Ball observed that:

"* * * we give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. *It does not go beyond that.* As a matter of law, I think they have that right, now, but because unions are voluntary associations, the common law in a great many States requires service on every member of the union, which is very difficult; and, if a judgment is rendered, it holds every member liable for the judgment.

"The pending measure, by providing that the union may sue and be sued as a legal entity, for a violation of contract, and that liability for damages will lie against union assets only, will prevent a repetition of the *Danbury Hatters'* case, in which many members lost their homes because of a judgment rendered against the union which also ran against individual members of the union" (93 Cong. Rec. 5146; emphasis added).

Even Senator Pepper, an outspoken opponent of the Taft-Hartley Act, clearly recognized that Section 301 did not in any manner change or extinguish causes of action

against an individual employee for wrongful conduct by him. He said:

“* * * what the conferees are looking for is a way to drain dry the union treasury, not only to put the worker in jail for what he did personally, *or sue him personally for what he did*, if it was wrong, but they want to authorize vexatious suits against the labor-organization treasury, because if the organization has not any money in its treasury it cannot effectively help the workers” (93 Cong. Rec. 6680; emphasis added).

The foregoing examination of the legislative history shows, we think conclusively, that Congress had no intention of removing the liability of individuals for their own improper conduct in labor matters. By providing that unions could be sued as entities on their contracts Congress certainly did not intend to overturn the law that individuals could be sued in tort for inducing the breach. Much less did it intend to say that individuals no longer were to be responsible on their own contracts or that they could, with impunity, induce other individuals to violate their individual contracts.

What Congress was striving for, and all that it was striving for, was to make it possible to enforce liability against union entities as such where a proper case could be shown, and to relieve individuals of responsibility for actions in which they had had no part, but for which, under earlier law in some states, they could be held responsible. There was utterly no intent on the part of Congress to change the well established law that merely because individuals were officers of a union they did not escape liability for individual conduct that they had engaged in. That law was well established both prior to and after the Taft-Hartley Act. Thus, in *Wortex Mills v. Textile Workers of America*, 380 Pa. 3, 109 A. 2d 815, it is stated (p. 822):

“Officers and individual members of a union or other

similar unincorporated association are liable for acts which they individually commit or participate in or authorize or assent to or ratify."

And in *Underwood v. Maloney*, 256 F. 2d 334, the Court of Appeals for the Third Circuit said (p. 339):

"It is settled law that officers or individual members of an unincorporated association are liable for acts which they individually commit or to which they contributed."

Defendants, however, interpret this Court's *Westinghouse* decision as a holding that Section 301 forbids any action (state or federal) by, for or against an individual employee. (*Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437.) This argument will not stand examination:

Westinghouse is clearly distinguishable from the case at bar. In that case a union was suing to collect asserted pay claims on behalf of the employees it represented. There is no federal policy as to what wages should be in general, other than that expressed in the Wage-Hour Laws. But in the instant case it is the no-strike, arbitration agreement which plaintiff seeks to enforce and implement. These are the very promises which Congress desired to see incorporated in collective agreements and which Section 301 was designed to make fully enforceable.

This leads to the larger question of whether or not individual damage actions brought to enforce the no-strike and arbitration provisions of a collective bargaining contract are "incompatible" or "inconsistent" with the "federal scheme to promote industrial peace" or would tend to "frustrate" it (*Lucas*). We believe that we have already abundantly demonstrated in our brief on the injunctive aspect of this case that the overwhelming desire of Congress in enacting Section 301 in particular, and the

Labor-Management Relations Act of 1947 in general, was to secure adherence to collective bargaining contracts once they were made. (pp. 23-26.) We will not belabor that point further here, but only point out that unless there is a remedy against the individual violator of a labor contract, as a practical matter there can be no enforcement of that contract in most cases. If an illegal strike is, in fact, instigated by the union, it will always remain open to it in any action under Section 301 to plead that the strike was solely the result of individual action for which no liability should attach. On the other hand, there are certain wildcat strikes which are not approved by the bargaining representative. Recently, the Secretary of Labor advanced this thesis as an explanation of the increase in illegal strikes at missile bases.⁸ Clearly, in such situations only action against the individuals involved can effectuate the federal policy of promoting labor peace.

3. Damage Actions Against Individual Employees Will Not Undercut a Union's Right of Exclusive Representation, But Will Fortify It.

The AFL-CIO asserts that permitting damage actions against individual wildcat strikers will undercut the authority of the majority union to act as "exclusive representative" of all the employees within a bargaining unit conferred by Section 9(a) of the Act. Its brief writers state:

"In effect, a judicial proceeding would become the instrument whereby the employer could negotiate with individual employees concerning their right to engage in one of the most crucial of concerted activities and one generally covered in the collective agreement" (p. 12).

8. Letter from Secretary of Labor Goldberg to Senator McClellan, reported in 49 Daily Labor Report [1962] A:1; March 12, 1962.

This is logic turned upside down. The wilcat striker, attempting to extort an advantage for himself above and beyond that provided in the collective agreement, is the party who is challenging the majority union's right of exclusive representation. Section 9(a) itself prohibits the exaction of such an advantage. Nor may it be said that the settlement of a lawsuit against an individual wilcat striker is bargaining over "wages, hours * * * or other conditions of employment." In this particular case the matter would appear to be moot because the same counsel are representing all defendants, union and individual.

4. Recognition of State Causes of Action Against Individual Wilcat Strikers Will in No Way Detract from the Uniformity of Federal Law Applicable to the Subject Matter.

The contention that recognition of state causes of action against individual employees for breaching their commitment not to strike, or inducing similar breaches by others, will destroy uniformity of federal law is without foundation. The most recent decisions of this Court have made it clear that it realizes that "'diversities and conflicts' may occur", that "this not necessarily unhealthy prospect is no more than the usual consequence of the historic acceptance of concurrent state and federal jurisdiction," and that this Court will continue to "resolve and accommodate such diversities and conflicts" as it has in the past (*Dowd Box Co. v. Courtney*, 368 U. S. 502, 514).

Whether state causes of action against individuals remain, or whether they are absorbed into federal law, is considerably less important than that collective agreements are to be "fully enforceable." The *Lucas* case clearly indicates that only actions which conflict with federal policy need be superseded: substance and not form will control. In *Lucas*, the trial court proceeded upon a theory of tort liability (ftn. 3); the Supreme Court of

Washington viewed the pleadings as establishing a breach of contract theory under state law and affirmed; and this Court affirmed on the basis of federal law (*Local 174 Teamsters v. Lucas Flour Co.*, October Term, 1961 No. 50). We conclude that the jurisdiction of the federal courts may be utilized to assure uniformity of whatever remedies and causes of action are recognized.

II.

THE CONTRACT CONTAINS NEITHER AN UNDERTAKING BY THE EMPLOYER TO SUBMIT CLAIMS FOR VIOLATION OF THE ARBITRATION AND NO-STRIKE CLAUSES OF THE CONTRACT TO ARBITRATION, NOR A COVENANT NOT TO SUE THE UNIONS UNDER SECTION 301 OF THE TAFT-HARTLEY ACT.

Defendants assert that Counts I and II should be dismissed or stayed because (a) plaintiff was required to assert all claims for breach of contract against the unions through the grievance procedure and arbitration and (b) that in fact the issues will be determined by assertedly pending arbitrations involving some of the individual defendants. Defendants' arguments are so complex that they must be examined in detail.

Plaintiff's position is simple: Section 301 gave it a right to sue the union for breach of the no-strike covenant. Plaintiff did not, by the contract, waive that right or agree to submit any claims against the union to the grievance procedure and arbitration.

We shall deal with these propositions below, but in approaching them it is suggested that the inherent differences between the positions of employers and unions with respect to arbitration of interim disputes under a contract must not be lost sight of:

The employer, at least theoretically, has full control

of the place of employment and must make the initial decision, or take the initial action, toward operating the premises; the bargaining agent, on the other hand, does not have that control but exists to complain or "grieve" if the control is wrongly exercised. The incident which precipitated the February 13-14, 1959 walkout furnishes an example. The employer made a decision that 3 employees should, under shop rules, be "docked" 15 minutes' pay because of tardiness. The contract did not require it to submit the question to the grievance procedure before taking action. It was entitled to take action subject to being reversed through the grievance procedure if it was wrong. The incident has countless variants and they all lend themselves to satisfactory solution and correction if necessary, by arbitration. National policy so recognizes. (See p. 26, *supra*.)

On the other hand if an employer had to obtain advance consent of an arbitrator on each day to day decision as to seniority, shop procedure and the like, productivity would drop to the vanishing point. Lost wages can be restored but no arbitrator can restore lost production. And so far as breaches of the no-strike clause are concerned arbitration is wholly unsatisfactory for the arbitrator cannot compel employees actually to pay for the damages they have created—he cannot issue writs of execution.

A. An Action Against a Union for Breach of a Collective Bargaining Agreement Was Specifically Authorized and Contemplated by Section 301 of the Taft-Hartley Act.

This is the precise type of case Congress authorized by Section 301 of the Labor-Management Relations Act—a suit in federal court against a union for breach of the arbitration and no-strike clauses of a collectively bar-

gained contract.⁹ Yet, defendants would have the Court hold that, properly construed, the very Act which Congress passed to permit the bringing of a suit such as this prevents bringing it and requires that enforcement of the no-strike pledge be submitted to arbitration. A more incongruous result is difficult to imagine because:

1. The prime Congressional purpose in adopting Section 301 was to make contracts enforceable against unions by suits in Federal Courts. No-strike pledges prior to 1947 had been violated repeatedly,¹⁰ enforcement of them was a basic Congressional objective. (Note President Truman's message to the post-war Labor Management Conference quoted at 353 U. S. 530-1.)

2. The Act was passed in 1947. Immediately thereafter union attorneys and officials advised unions either to take no-strike pledges out of their contracts, or to insert exculpatory clauses by which employers would either completely waive or greatly limit the right to sue for violation thereof.¹¹ In "Collective Bargaining and the Taft-Hartley Act", 33 *Iowa Law Review* 623 (1948), the author states:

9. The legislative history of 301 is examined at pp. 59-62, *supra*, and in the Appendix to *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 485-546. See also Petitioner's Brief in *Drake Bakeries, Inc. v. Local 50, etc.* No. 598, October Term 1961, at pp. 9-20.

"The legislative history makes clear that the basic purpose of § 301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations." *Dowd Box Co. v. Courtney*, 368 U. S. 502, 508-509. This is further substantiated by *Local 174, Teamsters v. Lucas Flour Company*, U. S. (No. 50, October Term, 1961, March 5, 1962), wherein the Court affirmed a judgment against a union for a violation of its contractual obligation not to strike.

10. Mangum "Taming Wildcat Strikes," *Harvard Business Review*, March-April (1960), p. 88.

11. This matter is covered in many periodicals, e.g., Daykin, "Collective Bargaining and the Taft-Hartley Act," 33 *Iowa L. R.* 623 (1948); Note, "Union Escape Clauses and the Taft-Hartley Act," 48 *Col. L. R.* 105 (1948). A sample contract containing an exculpatory provision can be found in Smith and Merrifield, *Labor Relations Law, Cases and Materials*, Rev. Ed. (1960), Appendix, p. 97.

"The Chief Counsel of the AFL has prepared suggestions to be followed in negotiating labor contracts. * * * Unions affiliated with the AFL are advised to attempt to include the following provisions in all contracts: (1) Liquidated damage clauses which provide a fixed maximum sum to be recovered by either party in suits for breach of contract; (2) Maximum use of exclusive arbitration to settle disputes and grievances in order that little or no resort will be had to courts; and (3) Provisions to define and limit the Union's responsibility for conduct of agents. Where no-strike clauses are eliminated from contracts, it is suggested that an added clause provide that nothing in the agreement prevents a strike or other concerted work stoppage and that workers may leave the employment of the company either singly or jointly" (p. 649).

3. The foregoing shows that for years it has been crystal clear that labor unions could be sued in Federal Courts for violation of no-strike provisions of contracts; that, if a union wished to limit this potential liability, it had to do so by a contract provision for which many samples or forms have been available. The instant contract contains no such limitation or exculpatory clause whatsoever.

4. The objective in construing any contract, labor or otherwise, "is to ascertain the intent of the parties from the language used" (*Slater v. Emerson*, 60 U. S. 224, 238). Can it rationally be said that by the instant contract Sinclair intended to waive its right to sue and agree to submit to arbitration what would otherwise be a valid cause of action against the unions?

In sum: *first*, this suit is precisely the type that Section 301 of the Taft-Hartley was intended to make available to remedy the precise evil here complained of; *second*, the parties knew when the contract was signed that it did contain a no-strike clause and did not contain a semblance of

a restriction on the employer's right to sue for violation of that clause; and *third*, the assertion that the parties intended to waive the employer's right to sue and to substitute arbitration as the sole remedy for violation of the no-strike provision is but a specious effort to avoid accountability.¹²

B. There Is No Undertaking in the Contract by the Employer to Submit Its Claims Arising From the Breach of the No-Strike Clause to the Grievance Procedure or Arbitration.

The keystone of defendants' involved argument necessarily is the contention that the collective agreement contains a promise by the employer to utilize the grievance procedure (and arbitration, if need be), rather than to resort to the courts for decision of any claims which it may have against the unions or individual employees arising out of breach of the no-strike clause. "Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582. Defendants assert that the contract contains such a promise to arbitrate or, at least, that it is "susceptible" of such an interpretation (Point I. B., p. 22). Defendants attempt to *imply* such an undertaking on three bases:

1. They assert:

"* * * [P]aragraph 3 of Article XXVI, which pro-

12. To carry the defendants' argument to its ultimate conclusion, all that would be necessary for a union to do when sued under § 301 for an alleged contract violation is to have one or more of its officials file spurious grievances claiming overtime pay for the dates in question and then move for a stay of the law action because the arbitrator *might* decide some issues common to both proceedings, *e.g.*, did the grievants participate in or cause the violation, or did they work overtime or lose a guaranteed right to do so.

vides a time limit for submission of a grievance *by the employer* or union 'within sixty (60) days from the date on which the complaint or grievance arose * * * ' (p. 28, emphasis supplied).

Insofar as this sentence asserts that Section 3 of the grievance and arbitration procedure (R. 19, Art. XXVI) provides a right for the employer to submit grievances or imposes a time limit for so doing, it is an outright misstatement of the wording of the contract, which actually provides:

"3. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty (60) days from the date on which the complaint or grievance arose, or from the date on which the employee or employees concerned first learned of the cause of complaint."

Defendants' attempt to read into Section 3 the word "employer," which simply does not appear there, is improper. Not only is there no such provision but it is clear that the provisions contemplate only grievances by or for employees against the employer and not the reverse.

2. Defendants suggest that because Article XXVI, Paragraph 6 (R. 19), provides that the President of the International Union and the Director of Industrial Relations for the Employer are to attempt to resolve "grievances or disputes" which have not been settled at a lower level, arbitration is available for the settlement of *all* disputes between the parties. However, Section 1 and 2 of Article XXVI read together, make it clear that the only arbitrable "grievances and disputes" are those relating to "wages, hours and working conditions."

3. The third method by which defendants seek to imply a promise by plaintiff to arbitrate is more involved. Defendants argue that the definition of a "grievance" is so broad that it would encompass the claim for damages in-

volved in this lawsuit. The contractual definition is as follows:

"A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations." (R. 19, Art. XXVI, Sec. 1.)

Using this clause as a point of departure, defendants appear to reason as follows:

(1) The phrase "hours, wages or working conditions" is similar to the language found in Section 8(d) of the Taft-Hartley Act which defines the duties of parties in collective bargaining; (2) Section 203(d) talks of methods for resolving disputes over the application or interpretation of a collective bargaining agreement; (3) the Section 8(d) language is more comprehensive than that found in Section 203(d); (4) therefore, it is "*highly unlikely*" that the parties to the instant contract meant a narrower scope of arbitrable disputes than that contained in Section 203(d), since (5) Article XXVI, Paragraph 8, provides for the selection of an impartial arbitrator from a Federal Mediation and Conciliation Service panel, and (6) since the *Warrior* contract was similar to the language in 203(d); (7) *Warrior* requires a stay.

There are many things wrong with this chain of reasoning. Foremost is the fact that the instant contract *does not*, unlike *Warrior*, make all differences between the parties "as to the meaning and application" of the contract subject to the grievance-arbitration machinery. Further, there is not a single case which holds that a no-strike clause is bargainable *for the reason* that it is a subject included within the phrase, "wages, hours or working conditions." The reason is obvious. A "strike" cannot rationally be defined as "wages," "hours" or "working

conditions": Certainly a strike is neither "wages" nor "hours" [of work]; it is a complete negation of "work" or any condition of work. A no-strike clause is what an employer receives in return for the "wages, hours and working conditions" which he is willing to offer and the employees and their representative are willing to accept. Such clauses are bargainable because they stabilize employment and implement the purpose of the National Labor Relations Act.

Thus, although the definition of a grievance is broad, it is apparent that it is not broad enough to comprehend a claim by the employer for violation of the no-strike and arbitration clauses of the agreement.

Examination of Article XXVI (R. 19, p. 31) in its entirety emphasizes the point that it does not provide for grievances or arbitrations involving the types of questions involved in this lawsuit. The "Grievance and Arbitration Procedure" contains a detailed specification as to precisely where, how and when union or employee grievances are to be filed and with what management representative. But there is no provision whatsoever for employer grievances. In particular, only designated officers of defendant International have the right to initiate the convening of an Arbitration Board (R. 19, Art. XXVI, Sec. 7).

In sum, in the instant case there is no undertaking by plaintiff to arbitrate or to grieve as to any manner of dispute or claim which it may have against defendants, much less is there any authorization for an arbitrator to award damages or enter an injunction against defendants. While recent decisions of this Court have given a broad interpretation to arbitration clauses in general, none of them have asserted so broad an authority for the arbitrator as defendants here propose.

Defendants' further assertion that for the Court to de-

cide whether or not the defendants violated the no-strike clause "involves a premature intrusion into the arbitrator's jurisdiction," is wrong for two basic reasons:

1. No matter how defendants attempt to distort the teachings of *Warrior*, *Enterprise Wheel* and *American Mfg. Co.*,¹³ the fundamental principle underlying any agreement to arbitrate remains the same, *the arbitrator's authority derives from the agreement, and his jurisdiction is therefore limited to those matters which the parties by their agreement have entrusted to him for decision.*¹⁴

2. While questions as to the merits of an arbitrable grievance are at least initially for the arbitrator regardless of how frivolous they may appear, *arbitrability* is still a question for the courts to decide.¹⁵

13. In the recent case of *Vulcan-Cincinnati, Inc. v. United Steelworkers*, 6 Cir., 289 F. 2d 103, the court observes that in these cases this Court was considering the arbitrability of unsettled grievances initiated by employees or their representatives (not a company claim based on a no-strike clause violation).

14. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582.

15. "It is clear that under both the agreement in this case and that involved in *American Manufacturing Co.*, ante, p. 564, the question of arbitrability is for the courts to decide. Cf. Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1508-1509. Where the assertion by the claimant is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of its arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose." (Footnote to majority opinion in *Warrior*, 363 U. S. 574 at 583.)

"To be sure, since arbitration is a creature of contract, a court must always inquire, when a party seeks to invoke its aid to force a reluctant party to the arbitration table, whether the parties have agreed to arbitrate the particular dispute. In this sense, the question of whether a dispute is 'arbitrable' is inescapably for the court." (Concurring opinion of Justices Brennan and Harlan in *American Mfg. Co.*, 363 U. S. 565 at 570.)

C. A Labor Organization Which Spurns Use of the Arbitration Procedure and Violates Both the Arbitration and No-Strike Clauses. by Engaging in a Wildcat Strike Rather Than Processing a Grievance Through the Procedure Provided by the Contract Is Precluded from Insisting That Its Violations Are Triable Only by an Arbitrator Rather Than Under Section 301 of the Labor Management Relations Act, 1947.

Even were we to assume *arguendo* that plaintiff could arbitrate this case, it would not follow that defendants have standing to insist—by motion to stay—that an arbitration board is the *only* forum available. A stay is a variety of injunction and equitable considerations condition the situations in which it is available. *Enelow v. New York Life Insurance Co.*, 293 U. S. 379. “[T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward * * *.” *Landis v. North American Co.*, 299 U. S. 248, 255.

Can defendants state such a case? To briefly restate, defendants agreed:

“when a grievance arises, the following [grievance] procedure *must* be followed * * *.” (Comp., Par. 6 at Art. XXVI, § 1, R. 11; R. 19; emphasis added.)

and again:

“there shall be no strikes or work stoppages:

(1) For any cause which is or may be the subject of a grievance * * *.”

(Comp., Par. 5 at R. 10; Art. III, R. 19.)

Defendants breached both promises by striking rather than grieving over alleged grievances having a total value of \$2.19. Nor was the breach trivial: it involved 999 out of 1700 employees and lasted two days (R. 16). It is difficult to envision parties less entitled to equitable consideration than these defendants.¹⁶

16. Cf. Sec. 8 of the Norris-LaGuardia Act.

It is also clear that to reward a union which has resorted to force rather than to arbitration by granting it a motion to stay a suit at law frustrates national policy, fails to place effective sanctions behind the agreement not to strike, and does not stabilize conditions of employment. These are the considerations which underlie many of this Court's recent decisions and control the result in this case.

In *Textile Workers v. Lincoln Mills*, 353 U. S. 448, this Court relied extensively upon the legislative history of § 301 and quoted from the Senate Report:

“ ‘The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract’ ” (p. 454).

The Court concluded that federal law includes “specific performance of promises to arbitrate grievances (p. 451); that “the agreement to arbitrate grievance disputes * * * should be specifically enforced (p. 451); and that Section 301 made “collective bargaining contracts * * * ‘equally binding and enforceable on both parties’ ” (p. 454; emphasis added).

Warrior and companion cases handed down by this Court on June 20, 1960 emphasize that the full power of the federal government is to be thrown behind and in support of the enforcement of agreements to arbitrate grievances.¹⁷

17. *United Steelworkers v. American Manufacturing Company*, 363 U. S. 564; *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U. S. 574; *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593; and *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.*, 363 U. S. 528.

What the Court said in *Warrior* is applicable here:

"In the commercial case, arbitration is the substitute for litigation. *Here arbitration is the substitute for industrial strife*" (p. 578; emphasis added).

"The Congress * * * has by § 301 * * * assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate" (p. 582).

With a few clearly distinguishable exceptions the lower courts which have been confronted with the precise issue of whether to grant a stay under similar circumstances have declined to do so.¹⁸ In the recent case of *Vulcan-Cincinnati, Inc. v. United Steelworkers*, 6 Cir., 289 F. 2d 103, 108, the court concludes that the principles enunciated in *Warrior*, *American Mfg. Co.* and *Enterprise Wheel* do not "conflict with our holding in *Benton Harbor* [242 F. 2d 536], nor do they change our conclusion that in the case before us a violation of the no strike clause was not a matter to be submitted to arbitration."

These decisions firmly establish the principle that a stay of an employer's action for damages, for the purpose of submitting to arbitration the very question which the courts are told to decide by Section 301 of Taft-Hartley, is not authorized by either that section or the United States Arbitration Act, 9 U. S. C. § 1, *et seq.* Those few cases which granted a stay (*e.g.*, *Yale & Towne Mfg. Co. v. Local 1717*,

18. *W. L. Mead, Inc. v. International Brotherhood of Teamsters*, D. Mass., 129 F. Supp. 313, 315, *aff'd*, 1 Cir., 230 F. 2d 576; *Gay's Express, Inc. v. International Brotherhood of Teamsters*, D. Mass., 169 F. Supp. 834, 836; *Markel Electric Products v. U. E.*, 2 Cir., 202 F. 2d 435; *Drake Bakeries, Inc. v. Local 50, etc.*, 2 Cir., 287 F. 2d 155, and 294 F. 2d 399, *cert. granted* (No. 598, October Term, 1961); *International Union v. Colonial Hardwood Flooring Co.*, 4 Cir., 168 F. 2d 33; *U. E. v. Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Lodge No. 12, etc. v. Cameron Iron Works*, 5 Cir., 257 F. 2d 467, *cert. den.* 358 U. S. 880; *Hoover Motor Express Co. v. Teamsters, etc.*, 6 Cir., 217 F. 2d 49; *International Union v. Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536; *Vulcan-Cincinnati, Inc. v. United Steelworkers*, 6 Cir., 289 F. 2d 103; *Cuneo Press v. Kokomo Paper Handlers*, 7 Cir., 235 F. 2d 108.

Machinists, 3 Cir., F. 2d, 49 L. R. R. M. 2652) did so because, unlike the present case, the scope of "the arbitration provision(s) involved (was) broad" and unlimited, and in several instances the union had not struck until after unsuccessfully seeking arbitration.¹⁹

III.

THE EMPLOYER HAS TAKEN NO ACTION WHICH WOULD CONSTITUTE A SUBMISSION OF THIS CASE TO ARBITRATION.

There are two types of agreements to arbitrate: agreements to arbitrate future disputes, usually referred to as executory agreements to arbitrate; and agreements to submit existing claims to an arbitrator, usually referred to as submission agreements. It is clear that Point "I" of defendants' brief is based on the theory that plaintiff, by the collectively bargained contract, entered into an executory agreement to arbitrate which would cover claims of violation of the no-strike clause. Apparently, although it is never very clearly stated, Point II of defendants' brief is based upon a claim that plaintiff and defendants

19. The majority in *Yale & Towne* notes that in the *Sinclair* contract "the arbitration provision was a narrow one, being limited to differences 'regarding wages, hours or working conditions'." The majority further comments that there was a limited arbitration provision in *Colonial Hardwood Flooring Co.*, and that in *Vulcan-Cincinnati, Inc.*, *Benton Harbor* and *Cuneo* only employees could file a grievance and invoke arbitration. (May we add, the same observation is true here.)

Defendants also assert that "[a] decision of the Seventh Circuit shortly after its opinion in the present action [290 F. 2d 312] appears to fit comfortably with [defendants' construction of] this Court's dictates in *Warrior*." *Nepco Unit v. Nekoosa-Edwards Paper Co.*, 7Cir., 287 F. 2d 452. We not only fail to understand the purpose of such a bold misstatement, but also fail to grasp how a decision (*Nepco*) made by the same court some two months before the opinion in our case was rendered in any way vitiates the latter.

entered into some kind of submission agreement to submit their various then existing differences to an arbitrator.

There is no support in the record for such a claim. At no time after the strike of February 13-14, 1959 did plaintiff agree to submit its claims against defendants, including those for damages, injunctive and declaratory relief, to arbitration.

Defendants' Point "II.A" is headed:

"The employer's claim of liability for breach of the no strike clause at law raises common issues of fact and contract interpretation and application which have been raised by the grievances submitted to arbitration protesting the right of the employer to discipline the individual defendants for allegedly committing the same breach."

Nowhere in the brief or in defendants' motion to stay is there support for this assertion. True, the motion to stay recites in its Paragraph 3 "the plaintiff (and defendants) are presently agreed to submit the issues raised in the Complaint, to the grievance procedure, and, if need be, to impartial arbitration" (R. 23). But if this be deemed an allegation that plaintiff has entered into a submission agreement, rather than referring to the collective agreement, it is wholly without support in the *Swanson* affidavit attached to the motion (R. 24-25).

It is true that some two weeks after the strike the defendants filed the grievances appearing at pages 35-41 of the Record. But plaintiff cannot prevent defendants from filing grievances on whatever subject they choose. Nor can plaintiff prevent the unions from designating a person to act as its representative on the "Arbitration Board." This unilateral action by the unions, however, does not constitute a valid submission to arbitration. For a submission agreement, like any other contract, is a consensual

arrangement. At no time has plaintiff consented to submit its damage and other claims to an arbitrator.

In *District of Columbia v. Bailey*, 171 U. S. 161, 171 (1898), the Court recited well settled law:

“ ‘The submission is the agreement of the parties to refer. It is, therefore, a contract, and will in general be governed by the law concerning contracts.’ In *Whitcher v. Whitcher*, 49 N. H. 176, the Supreme Court of New Hampshire said (p. 180): ‘A submission is a contract between two or more parties, whereby they agree to refer the subject in dispute to others and to be bound by their award, and the submission itself implies an agreement to abide the result, even if no such agreement were expressed’.”

Prior to *Lincoln Mills* the courts differed as to whether executory contracts to arbitrate contained in collective agreements were enforceable, but submission agreements have long been enforceable provided they were valid as contracts. That doctrine has not changed. As this Court stated in *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574:

“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” (p. 582.)

In the absence of any submission agreement, defendants' assertion that the grievances which they filed may involve the strike questions before the Court is wholly irrelevant: plaintiff has not *consented* to submit its claims arising from the strike to arbitration. Indeed, as the affidavit of plaintiffs' representative in charge of industrial relations reveals: no impartial arbitrator has been agreed upon by the parties; and the plaintiff will contend, if the union selects an arbitrator, that he is wholly without jurisdiction (R. 33-34).

While this wholly disposes of the contentions advanced

in Point II of defendants' brief, the assertion that the grievances filed by defendants involve the same questions before the Court may be further answered. None of the grievances filed (R. 37-41) would permit an arbitrator to award damages against the union or the individual defendants. None of the grievances filed would empower an arbitrator to award injunctive relief. None of the grievances filed would prevent the union once again from spurning its promise to arbitrate rather than to strike. While it may be true that arbitration of these grievances might involve some questions which are common to this lawsuit, obviously that is not the fault of plaintiff. If defendants find appearances in federal courts so distasteful, and so much more onerous than appearing before an arbitrator, they need only fulfill the promise which they have made to arbitrate their grievances rather than to strike.

CONCLUSION.

It is submitted that the judgment of the Court of Appeals in No. 434 be reversed, and that the judgment of the Court of Appeals in No. 430 be affirmed.

Respectfully submitted,

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March 31, 1962.

APPENDIX.

United States Constitution—Amend. V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

National Labor Relations Act, 61 Stat. 136, 29 U. S. C. 151, et seq.:

"Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

“The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

“Experience has proven that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

“Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

“It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full

freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

"Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

"Section 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also

mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification

is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purpose of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer."

"Section 201. That it is the policy of the United States that— • • •

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies."

"Section 203. (d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

"Section 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be

brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

“Section 303. (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.”

Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. 101, *et seq.*

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"Section 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

"Section 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

"Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employ-

ment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

“Section 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined), from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

“Section 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

“Section 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

“Section 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination), in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and

will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be

issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee), and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

"Section 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"Section 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record

of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

“Section 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.

“Section 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed: Provided, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

“Section 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the

contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

“Section 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a ‘later dispute’ (as hereinafter defined), of ‘persons participating or interested’ therein (as hereinafter defined).

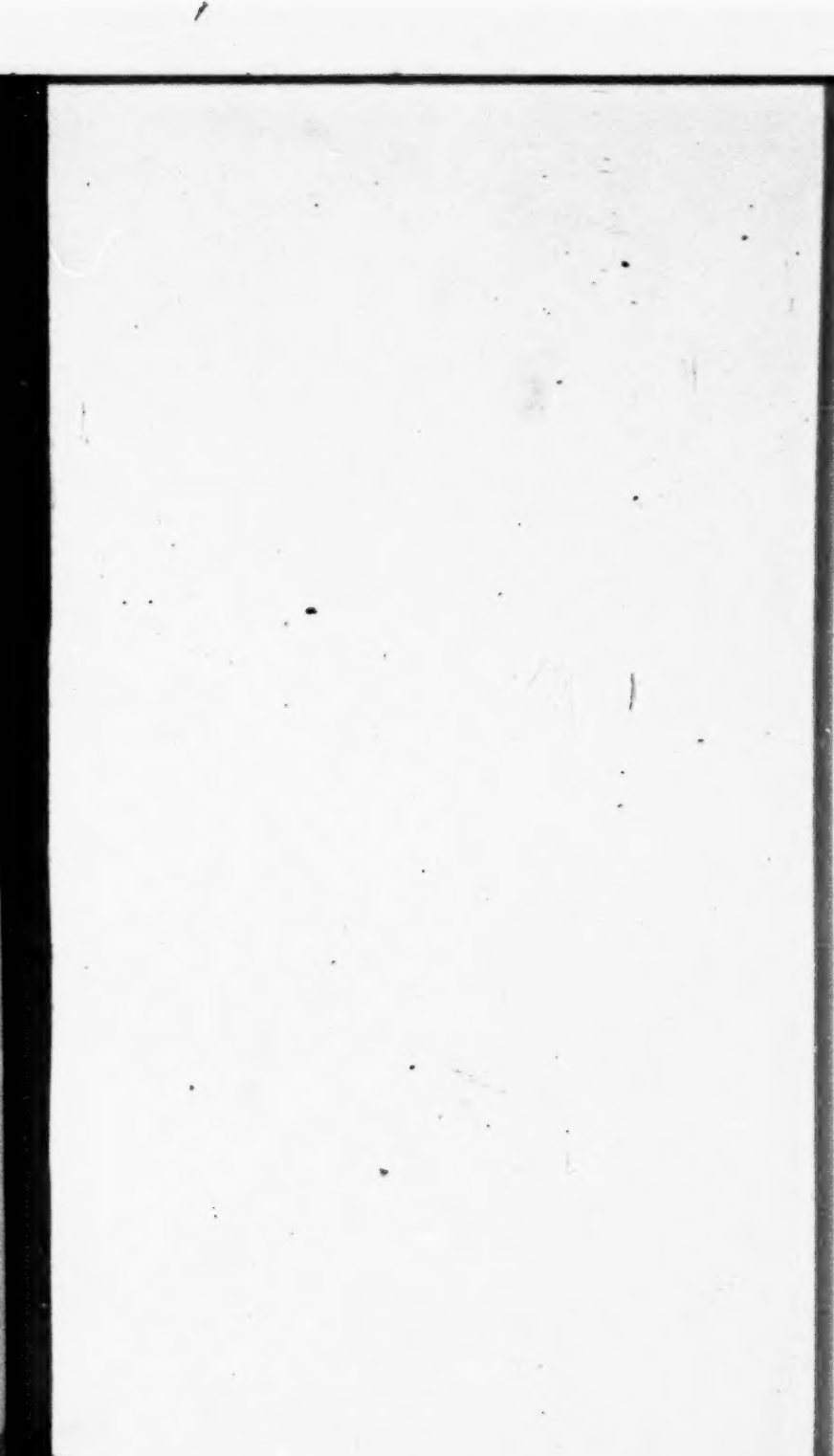
(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"Section 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"Section 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

Nos. 430 and 434

SINCLAIR REFINING COMPANY, A CORPORATION,
Petitioner in No. 434, and
Respondent in No. 430
vs.

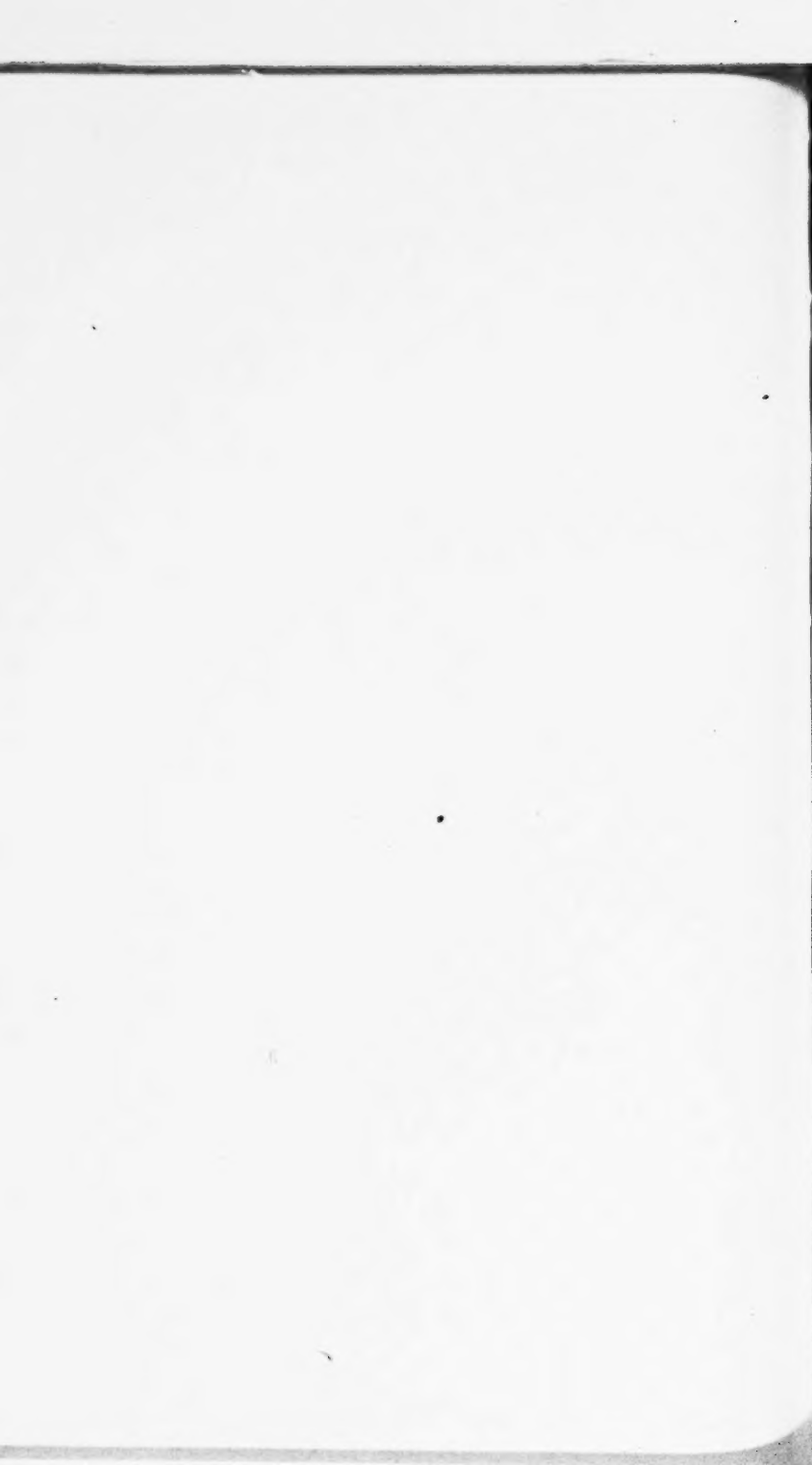
SAMUEL M. ATKINSON, ET AL.,
Respondents in No. 434, and
Petitioners in No. 430.

REPLY BRIEF ON BEHALF OF SINCLAIR REFINING COMPANY IN NO. 434.

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REPLY BRIEF ON BEHALF OF SINCLAIR REFINING COMPANY IN NO. 434.

I.

**No-Strike, Compulsory-Arbitration Contracts Prior to the
Norris-La Guardia Act, Were Uniformly Enforced by
Injunctions Forbidding Strikes Which Violated Them.**

Defendants do not attempt to meet the above stated proposition of our original brief (pp. 11-14), save in passing fashion at their pages 85 and 86, in which they refer to *Foss v. Portland Terminal Co.*, 1 Cir., 287 Fed. 33, and *Kinloch Telephone Co. v. Local Union No. 2*, 8 Cir., 275 Fed. 241.

Those cases do not militate against, but strengthen our proposition. The *Foss* case was one of many that arose from the railway shopmen's strike of 1922. It involved the interplay of the Transportation Act of 1920 (44 Statutes at Large 1447, 45 U. S. C. § 101, *et seq.*) and the Clayton Act. Detailed examination of the Transportation Act of 1920 is not relevant for present purposes; it is sufficient to say that it had no provision outlawing strikes, nor did it make decisions of potential "Adjustment Boards," of the "Board of Mediation and Conciliation" or of the "Railroad Labor Board" enforceable. (See President Harding's Special Message to Congress, August 18, 1922, 62 Cong. Rec. 11539.) In the *Foss* case the union had a contract with the Portland Terminal Company which *did not contain* a no-strike provision. In substance the District Court in *Foss* (283 Fed. 204) implied an undertaking not to strike into any situation in which there was a contract that called for submission of major disputes to the Transportation Act's Railroad Labor Board. It issued an injunction. The Court of Appeals for the First Circuit reversed and said, *arguendo*, that a naked contract to arbitrate, if it be assumed there had been one, would not render a strike illegal.

On the other hand, in the *Kinloch Telephone* case there was a true no-strike, no-lockout, *quid pro quo* contract, and the Court of Appeals for the Eighth Circuit directed that an injunction issue.

Thus our proposition that prior to Norris-La Guardia genuine no-strike, compulsory-arbitration clauses uniformly were enforced, is not impaired by defendants' brief and is strengthened through addition of the *Kinloch Telephone* case.

II.

Defendants Have Been Unable to Provide Any Answer to Our Contention that a Construction of Norris-LaGuardia which Would Permit Injunctive Enforcement Against Employers of Their Covenants to Arbitrate But Forbid Injunctive Enforcement Against Employees (and Their Organizations) of Their Correlative Covenant Not to Strike, Would Render the Act Unconstitutional as Denying Equal Protection of the Laws.

In our original brief (pp. 29-33) we pointed out the discrimination and denial of equal protection of law that would result if it were held that industrial employers cannot secure injunctive enforcement of a contract not to strike while employees can secure such enforcement of the correlative promise of the employer to arbitrate. Defendants' failure to answer this basic constitutional point comes, we suggest, not from choice but from inability to make satisfactory answer.

Norris-LaGuardia cannot, we respectfully submit, constitutionally be construed to permit employees to obtain injunctive enforcement of the no-strike, compulsory-arbitration contract but to deny equal remedy to employers.

III.

A Court of Equity May Enjoin Continuation of an Illegal Course of Conduct.

Defendants assert that because no strike was in progress at the time an injunction was prayed, no court has injunctive power to reach into the "indefinite future" to establish itself as the "primary control over the daily course of labor relations." Defendants' contention greatly overstates the case:

The courts below did not reach questions of this variety. They simply held that Norris-LaGuardia stood in the way of any kind of injunctive relief. Therefore, we believe defendants' contentions as to the scope of relief are not ripe for decision here. However, the following considerations may be noted.

1. Erroneous factual assertions are made at page 81 of defendants' brief that the affidavit of the president of the Local Union is "uncontroverted," that it shows that practically all of the disputes alleged in Count III have been settled through the grievance and arbitration provisions, and that the remaining elements of conflict are in the process of settlement. We regret it is our duty to state that none of those assertions are true:

The affidavit of Mr. Swanson is controverted (see our original brief, pp. 37-39).

How the various walkouts were settled or terminated is not shown by the record.

The asserted \$2.19 pay grievance over which the February 13-14, 1959 walkout was staged was subsequently submitted for disposition under the grievance procedure (R. 35-36). What the other grievances (R. 37-41) really are about, cannot be ascertained unless and until there is an attempt to arbitrate them; however, they do not, on their faces, even claim that the grievants were "disciplined" as counsel now assert.

2. The count for an injunction fundamentally is based upon the allegation (which the motion to dismiss admits) that defendants had shown a continuing proclivity toward a particular course of illegal conduct. The power of a court of equity to enjoin continuance of a course of illegal conduct is clear. In the labor field especially it is clear that courts of equity have power to enjoin potential future breaches of duty once a past violation, much less a steady

pattern of it such as is admitted by the motion to dismiss here, is established. All orders of courts approving Labor Board cease and desist orders are in large part injunctions restraining future conduct.

In both *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, and in *May Stores Co. v. National Labor Relations Board*, 326 U. S. 376, the Court pointed out that orders of the National Labor Relations Board were essentially injunctive in character and became directly so when converted into so-called enforcement orders and should be framed according to classic principles of equitable remedies. In the *Express Publishing* case, at page 435, the Court said:

"A federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past. * * *"

and at page 436 further held:

"The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts¹ which the Board has found to have been committed by the employer in the past. * * *" (Emphasis supplied.)

3. The contention that the complaint prays for an injunction which will establish the "primary control over the daily course of labor relations" is mere fanciful exaggeration. The only injunction which was prayed was one which would restrain defendants from aiding or participating

1. For typical cases where Courts of Appeal have exercised this power see *National Labor Relations Board v. Sewell Mfg. Co.*, 5 Cir., 172 F. 2d 459; *National Labor Relations Board v. Gerling Furniture Mfg. Co.*, 7 Cir., 103 F. 2d 663; *Pueblo Gas & Fuel Co. v. National Labor Relations Board*, 10 Cir., 118 F. 2d 304.

in "any strike, stoppage of work, * * * etc., at the East Chicago refinery * * * in support of, or because of, any matter or thing which is or could be the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which contains like or similar provisions." (R. 18.) All that was prayed was a limited injunction, i. e., one that would prohibit illegal strikes over matters that properly were within the grievance procedure. This in no way would constitute "control over the daily course of labor relations."

4. The proposed duration of the injunction was not indefinite. The complaint prays only for an injunction limited to the life of the contract then in effect, or any extension thereof, or any subsequent contract between the parties having substantially identical provisions. The prayer is based upon the fact that this contract, in common with most modern collectively bargained contracts, anticipates continued relations between the parties and a continuation of the basic framework of the contract. If it be assumed, as we think is the case, that nine instances of illegal strikes in a period of some nineteen months in the life of a two-year contract, warranted the issuance of an injunction to protect the contract for the remaining five months of its stated existence, it would be a peculiar thing if promptly upon renewal or extension of the contract (as occurred) at the end of its stated two-year life, plaintiff would be required to get a new injunction to protect a new contract containing the old no-strike, compulsory-arbitration provisions.

5. Finally, if it be assumed as we contend that Norris-LaGuardia does not remove jurisdiction, it is apparent that the District Court would be governed by "traditional equitable considerations" (*Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.*, 363 U. S. 528, 531) in

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tioning its remedy so as to afford only proper and appropriate relief on the particular facts as it found them after hearing.

Respectfully submitted,

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April 9, 1962.

SUPREME COURT OF THE UNITED STATES

No. 430.—OCTOBER TERM, 1961.

Samuel M. Atkinson, et al.,	} On Writ of Certiorari to the	
Petitioners,		United States Court of
v.		Appeals for the Seventh
Sinclair Refining Company.)	Circuit.	

[June 18, 1962.]

MR. JUSTICE WHITE delivered the opinion of the Court.

The respondent company employs at its refinery in East Chicago, Illinois, approximately 1,700 men, for whom the petitioning international union and its local are bargaining agents, and 24 of whom are also petitioners here. In early February 1959, the respondent company docked three of its employees at the East Chicago refinery a total of \$2.19. On February 13 and 14, 999 of the 1,700 employees participated in a strike or work stoppage, or so the complaint alleges. On March 12, the company filed this suit for damages and an injunction, naming the international and its local as defendants, together with 24 individual union member-employees.

Count I of the complaint, which was in three counts, stated a cause of action under § 301 of the Taft-Hartley Act (29 U. S. C. § 185) against the international and its local. It alleged an existing collective bargaining agreement between the international and the company containing, among other matters, a promise by the union not to strike over any cause which could be the subject of a grievance under other provisions of the contract. It was alleged that the international and the local caused the strike or work stoppage occurring on February 13 and 14 and that the strike was over the pay claims of three employees in the amount of \$2.19, which claims were properly subject to the grievance procedure provided by

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the contract. The complaint asked for damages in the amount of \$12,500 from the international and the local.

Count II of the complaint purported to invoke the diversity jurisdiction of the District Court. It asked judgment in the same amount against 24 individual employees, each of whom was alleged to be a committeeman of the local union and an agent of the international, and responsible for representing the international, the local, and their members. The complaint asserted that on February 13 and 14, the individuals, "contrary to their duty to plaintiff to abide by such contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of said contract, and to interfere with performance thereof by the said labor organizations, and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of said labor organizations, fomented, assisted and participated in a strike or work stoppage"

Count III of the complaint asked for an injunction but that matter need not concern us here since it is disposed of in *Sinclair Refining Co. v. Atkinson*, *post*, —, decided this day.

The defendants filed a motion to dismiss the complaint on various grounds and a motion to stay the action for the reasons (1) that all of the issues in the suit were referable to arbitration under the collective bargaining contract and (2) that important issues in the suit were also involved in certain grievances filed by employees and said to be in arbitration under the contract. The District Court denied the motion to dismiss Count I, dismissed Count II, and denied the motion to stay (187 F. Supp. 225). The Court of Appeals upheld the refusal to dismiss or stay Count I, but reversed the dismissal of Count II (290 F. 2d 312), and this Court granted certiorari (368 U. S. 937.

I.

We have concluded that Count I should not be dismissed or stayed. Count I properly states a cause of action under § 301 and is to be governed by federal law. *Local 174 v. Lucas Flour Co.*, 369 U. S. 95, 102-104; *Textile Workers v. Lincoln Mills*, 353 U. S. 448. Under our decisions, whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties. "The Congress . . . has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582. See also *United Steelworkers v. American Mfg. Co.*, 363 U. S. 564, 570-571 (concurring opinion). We think it unquestionably clear that the contract here involved is not susceptible to a construction that the company was bound to arbitrate its claim for damages against the union for breach of the undertaking not to strike.

While it is quite obvious from other provisions of the contract¹ that the parties did not intend to commit all

¹ The no-strike clause (Article 3) provides that "There shall be no strikes . . . (1) for any cause which is or may be the subject of a grievance . . . or (2) for any other cause, except upon written notice by the Union to the Employer . . ." Article 27, covering "general disputes," provides that disputes which are general in character or which affect a large number of employees are to be negotiated between the parties; there is no provision for arbitration. Moreover, the management-prerogative clause (Article 31) recognizes that "operation of the Employer's facilities and the direction of the working forces, including the right to hire, suspend or discharge for good

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of their possible disputes and the whole scope of their relationship to the grievance and arbitration procedures established in Article 26,² that article itself is determinative of the issue in this case since it precludes arbitration boards from considering any matters other than employee grievances.³ After defining a grievance as "any difference regarding wages, hours or working conditions between the parties hereto or between the employer and an employee covered by the working agreement," Article 26 provides that the parties desire to settle employee grievances fairly and quickly and that therefore a stated procedure "must be followed." The individual employee is required to present his grievance to his foreman, and if not satisfied there, he may go to the plant superintendent who is to render a written decision. There is also provision for so-called Workmen's Committees to present

and sufficient cause and pursuant to the seniority Article of this agreement, the right to relieve employees from duties because of lack of work are among the sole prerogatives of the employer; provided, however, that . . . such suspensions and discharges shall be subject to the grievance and arbitration clause"

² Article 26 is set out in full *infra*, at p. —, as an Appendix.

³ We do not need to reach, therefore, the question of whether, under the contract involved here, breaches of the no-strike clause are "grievances," i. e., "differences relating to wages, hours, or working conditions," or are "grievances" in the more general sense of the term. See *Hoover Express Co. v. Teamsters Local, No. 327*, 217 F. 2d 49 (C. A. 6th Cir.). The present decision does not approve or disapprove the doctrine of the *Hoover* case or the Sixth Circuit cases following it (e. g., *Vulcan-Cincinnati, Inc., v. United Steelworkers*, 289 F. 2d 103; *United Auto Workers v. Benton Harbor Indus.*, 242 F. 2d 536). See also cases collected in *Yale & Towne Mfg. Co. v. Local Lodge No. 1717*, — F. 2d —, — nn. 5, 6 (C. A. 3d Cir.). In *Drake Bakeries, Inc., v. Local 50*, *post*, —, decided this day, the question of arbitrability of a damages claim for breach of a no-strike clause is considered and resolved in favor of arbitration in the presence of an agreement to arbitrate "all complaints, disputes or grievances arising between them [i. e., the parties], involving . . . any act or conduct or relation between the parties."

grievances to the local management. If the local superintendent's decision is not acceptable, the matter is to be referred for discussion between the President of the International and the Director of Industrial Relations for the company (or their representatives), and for decision by the Director alone. If the Director's decision is disputed, then "upon request of the President or any District Director" of the international, a local arbitration board may be convened and the matter finally decided by this board.

Article 26 then imposes the critical limitation. It is provided that local arbitration boards "shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement." There is not a word in the grievance and arbitration article providing for the submission of grievances by the company. Instead, there is the express, flat limitation that arbitration boards should consider only employee grievances. Furthermore, the article expressly provides that arbitration may be invoked only at the option of the union. At no place in the contract does the union agree to arbitrate at the behest of the company. The company is to take its claims elsewhere, which it has now done.

The union makes a further argument for a stay. Following the strike, and both before and after the company filed its suit, 14 of the 24 individual defendants filed grievances claiming reimbursement for pay withheld by the employer. The union argues that even though the company need not arbitrate its claim for damages, it is bound to arbitrate these grievances; and the arbitrator, in the process of determining the grievants' right to reimbursement, will consider and determine issues which also underlie the company's claim for damages. Therefore, it is said that a stay of the court action is appropriate.

We are not satisfied from the record now before us, however, that any significant issue in the damage suit

will be presented to and decided by an arbitrator. The grievances filed simply claimed reimbursement for pay due employees for time spent at regular work or processing grievances. Although the record is a good deal less than clear and although no answer has been filed in this case, it would appear from the affidavits of the parties presented in connection with the motion to stay that the grievants claimed to have been disciplined as a result of the work stoppage and that they were challenging this disciplinary action. The company sharply denies in its brief in this Court that any employee was disciplined. In any event, precisely what discipline was imposed, upon what grounds it is being attacked by the grievants, and the circumstances surrounding the withholding of pay from the employees are unexplained in the record. The union's brief here states that the important issue underlying the arbitration and the suit for damages is whether the grievants instigated or participated in a work stoppage contrary to the collective bargaining contract. This the company denies and it asserts that no issue in the damage suit will be settled by arbitrating the grievances.

The District Court must decide whether the company is entitled to damages from the union for breach of contract. The arbitrator, if arbitration occurs, must award or deny reimbursement in whole or in part to all or some of the 14 employees. His award, standing alone, obviously would determine no issue in the damage suit. If he awarded reimbursement to the employees and if it could be ascertained with any assurance⁴ that one of his subsidiary findings was that the 14 men had not participated in a forbidden work stoppage—the critical issue according to the union's brief—the company would never—

⁴ Arbitrators generally have no obligation to give their reasons for an award. *United Steelworkers v. Enterprise Corp.*, 363 U. S. 593, 598; *Bernhardt v. Polygraphic Co.*, 350 U. S. 198, 203. The record of their proceedings is not as complete as it is in a court trial. *Ibid.*

theless not be foreclosed in court since, even if it were bound by such a subsidiary finding made by the arbitrator, it would be free to prove its case in court through the conduct of other agents of the union. In this state of the record, the union has not made out its case for a stay.⁵

For the foregoing reasons, the lower courts properly denied the union's motion to dismiss Count I or stay it pending arbitration of the employer's damage claim.

II.

We turn now to Count II of the complaint, which charged 24 individual officers and agents of the union with breach of the collective bargaining contract and tortious interference with contractual relations. The District Court held that under § 301 union officers or members cannot be held personally liable for union actions, and that therefore "suits of the nature alleged in Count II are no longer cognizable in state or federal courts." The Court of Appeals reversed, however, ruling that "Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court."

We are unable to agree with the Court of Appeals, for we are convinced that Count II is controlled by federal

⁵ The union also argues that the preemptive doctrine of cases such as *San Diego Bldg. Trades Council v. Garmon*, 359 U. S. 236, is applicable and prevents the courts from asserting jurisdiction. Since this is a § 301 suit, that doctrine is inapplicable. *Local 174 v. Lucas Flour Co.*, 369 U. S. 95, 101 n. 9.

We put aside, since it is unnecessary to reach them, the questions of whether the employer was excused from arbitrating the damage claim because it was over breach of the no-strike clause (see *Drake Bakeries, Inc., v. Local 50*, *post*, —, decided this day) and whether the underlying factual or legal determination, made by an arbitrator in the process of awarding or denying reimbursement to 14 employees, would bind either the union or the company in the latter's action for damages against the union in the District Court.

law and that it must be dismissed on the merits for failure to state a claim upon which relief can be granted.

Under § 301 a suit for violation of the collective bargaining contract in either a federal or state court is governed by federal law (*Local 174 v. Lucas Flour Co.*, 369 U. S. 95, 102-104; *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448), and Count II on its face charges the individual defendants with a violation of the no-strike clause. After quoting verbatim the no-strike clause, Count II alleges that the 24 individual defendants "contrary to their duty to plaintiff to abide by" the contract fomented and participated in a work stoppage in violation of the no-strike clause. The union itself does not quarrel with the proposition that the relationship of the members of the bargaining unit to the employer is "governed by" the bargaining agreement entered into on their behalf by the union. It is universally accepted that the no-strike clause in a collective agreement at the very least establishes a rule of conduct or condition of employment the violation of which by employees justifies discipline or discharge (*Mastro Plastics Corp. v. Labor Board*, 350 U. S. 270, 280 & n. 10; *Labor Board v. Rockaway News Co.*, 345 U. S. 71, 80; *Sands Mfg. Co. v. Labor Board*, 306 U. S. 332; *Labor Board v. Draper Corp.*, 145 F. 2d 199 (C. A. 4th Cir.); *United Biscuit Co. v. Labor Board*, 128 F. 2d 771 (C. A. 7th Cir.); see *R. R. Donnelley & Sons Co.*, 5 Lab. Arb. 16; *Ford Motor Co.*, 1 Lab. Arb. 439). The conduct charged in Count II is therefore within the scope of a "violation" of the collective agreement.

As well as charging a violation of the no-strike clause by the individual defendants, Count II necessarily charges a violation of the clause by the union itself. The work stoppage alleged is the identical work stoppage for which the union is sued under Count I and the same damage is alleged as is alleged in Count I. —Count II states that the individual defendants acted "as officers, committeemen

and agents of said labor organizations" in breaching and inducing others to breach the collective bargaining contract. Count I charges the principal, and Count II charges the agents for acting on behalf of the principal. Whatever individual liability Count II alleges for the 24 individual defendants, it necessarily restates the liability of the union which is charged under Count I, since under § 301 (b) the union is liable for the acts of its agents, under familiar principles of the law of agency (see also § 301 (e)). Proof of the allegations of Count II in its present form would inevitably prove a violation of the no-strike clause by the union itself. Count II, like Count I, is thus a suit based on the union's breach of its collective bargaining contract with the employer, and therefore comes within § 301 (a). When a union breach of contract is alleged, that the plaintiff seeks to hold the agents liable instead of the principal does not bring the action outside the scope of § 301.⁶

Under any theory, therefore, the company's action is governed by the national labor relations law which Congress commanded this Court to fashion under § 301 (a). We hold that this law requires the dismissal of Count II for failure to state a claim for which relief can be granted—whether the contract violation charged is that of the union or that of the union plus the union officers and agents.

When Congress passed § 301, it declared its view that only the union was to be made to respond for union

⁶ *Swift & Co. v. United Packinghouse Workers*, 177 F. Supp. 511 (D. Colo.). Contra, *Square D Co. v. United E. R. & M. Wkrs.*, 123 F. Supp. 776, 779-781 (E. D. Mich.). See also *Morgan Drive Away, Inc., v. Teamsters Union*, 166 F. Supp. 885 (S. D. Ind.), concluding, as we do, that the complaint should be dismissed because of §§ 301 (b) and 301 (e), but for want of jurisdiction rather than on the merits. Our holding, however, is that the suit is a § 301 suit; whether there is a claim upon which relief can be granted is a separate question. See *Bell v. Hood*, 327 U. S. 678.

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wrongs, and that the union members were not to be subject to levy. Section 301 (b) has three clauses. One makes unions suable in the courts of the United States. Another makes unions bound by the acts of its agents according to conventional principles of agency law (cf. § 301 (e)). At the same time, however, the remaining clause exempts agents and members from personal liability for judgments against the union (apparently even when the union is without assets to pay the judgment). The legislative history of § 301 (b) makes it clear that this third clause was a deeply felt congressional reaction against the *Danbury Hatters* case (*Loewe v. Lawlor*, 208 U. S. 274; *Lawlor v. Loewe*, 235 U. S. 522), and an expression of legislative determination that the aftermath (*Loewe v. Savings Bank of Danbury*, 236 F. 444 (C. A. 2d Cir.)), of that decision was not to be permitted to recur. In that case, an antitrust treble damage action was brought against a large number of union members, including union officers and agents, to recover from them the employer's losses in a nationwide, union-directed boycott of his hats. The union was not named as a party, nor was judgment entered against it. A large money judgment was entered, instead, against the individual defendants for participating in the plan "emanating from headquarters" (*id.*, at 534), by knowingly authorizing and delegating authority to the union officers to do the acts involved. In the debates, Senator Ball, one of the Act's sponsors, declared that § 301, "by providing that the union may sue and be sued as a legal entity, for a violation of contract, and that liability for damages will lie against union assets only, will prevent a repetition of the *Danbury Hatters* case, in which many members lost their homes" (93 Cong. Rec. 5014). See also 93 Cong. Rec. 3839, 6283; S. Rep. No. 105, 85th Cong., 1st Sess. 16.

Consequently, in discharging the duty Congress imposed on us to formulate the federal law to govern

§ 301 (a) suits, we are strongly guided by and do not give a niggardly reading to § 301 (b). "We would undercut the Act and defeat its policy if we read § 301 narrowly" (*Lincoln Mills*, 353 U. S. at 456). We have already said in another context that § 301 (b) at least evidences "a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it" (*Lewis v. Benedict Coal Corp.*, 353 U. S. 459, 470). This policy cannot be evaded or truncated by the simple device of suing union agents or members, whether in contract or tort, or both, in a separate count or in a separate action for damages for violation of a collective bargaining contract for which damages the union itself is liable. The national labor policy requires and we hold that when a union is liable for damages for violation of the no-strike clause, its officers and members are not liable for these damages. Here, Count II, as we have said, necessarily alleges union liability but prays for damages from the union agents. Where the union has inflicted the injury it alone must pay. Count II must be dismissed.⁷

The case is remanded to the District Court for further proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.

⁷ In reaching this conclusion, we have not ignored petitioner's argument that he drafted Count II in order to anticipate the possible union defense under Count I that the work stoppage was unauthorized by the union, and was a wildcat strike led by the 24 individual defendants acting not in behalf of the union but in their personal and nonunion capacity. The language of Count II contradicts the argument, however, and we therefore do not reach the question of whether the count would state a proper § 301 (a) claim if it charged unauthorized, individual action.

APPENDIX.

Article 26 provides:

"GRIEVANCE AND ARBITRATION PROCEDURE

"Definition

"1. A grievance is defined to be any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations.

"Grievance Procedure

"It is the sincere desire of both parties that employees grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedure must be followed:

"2. For the purpose of adjusting employee grievances and disputes as defined above, it is agreed that any employee, individually or accompanied by his committeeman, if desired shall:

"(a) Seek direct adjustment of any grievance or dispute with the foreman under whom he is employed. Such meeting will be without loss of time to the employee and/or his committeeman during regular working hours for time spent in conference with the foreman. The foreman shall reply to said employee within three (3) working days (Saturday, Sunday and Holidays excluded) from the date, on which the grievance was first presented to him;

"(b) If the question is not then settled, the employee may submit his grievance in writing, on forms supplied by Union, to a committee selected as hereinafter provided for the particular plant or region in which such employee is employed. Such committee shall investigate said complaint and if in its opinion the grievance has merit, it shall have the right to meet with the local company superintendent or his representative, who shall receive the committee for this purpose. Written decisions shall be made by the local superintendent or his representative within ten (10) days after meeting with the committee, provided that prior to the time of or at the meeting with the committee such complaint or grievance has been submitted in writing to the local superintendent or his representative.

"(c) In exceptional cases, Workmen's Committees shall have the right to institute grievances concerning any alleged violation of this Agreement by filing written complaint with the official locally in charge.

"(d) Any grievance filed with or by the local Workmen's Committee can only be withdrawn with the Workmen's Committee's consent.

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"3. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty (60) days from the date on which the complaint or grievance arose, or from the date on which the employee or employees concerned first learned of the cause of complaint.

"4. The committee above mentioned shall be selected from among and by employees of the Employer who are members of the Union. No official, foreman, or employee having authority to hire or discharge men shall serve on the committee.

"5. In case of discharge or lay-off, employees who may desire to file complaints must present such complaints within one (1) week after the effective date of discharge or lay-off to the committee mentioned in this Article. Before any such employee is to be discharged for cause, other than flagrant violation of rules, or is to be laid off, he shall be given a written notice, dated and signed by his foreman or other representative of the Employer, setting forth the reason for such discharge or lay-off. In the event an employee has been discharged for a flagrant violation of a company rule, he shall subsequently, upon request, be given a written notice, dated and signed by his foreman or other representative of the Employer setting forth the reason for such discharge. The Workmen's Committee will be furnished with a copy of the statement furnished to the employee, both where the discharge or lay-off is for cause or for flagrant violation of a Company rule. Any grievance to be filed under this section must be filed within forty (40) days from the effective date of the discharge or lay-off.

"6. In the event the decision of the superintendent or his representative shall not be satisfactory to the committee, it is agreed that the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, or someone designated by him, shall, not later than forty-five (45) days after such decision, have the right to confer with the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, for the purpose of discussing grievances or disputes and of obtaining decisions thereon. It is agreed that the Director of Industrial Relations for the Sinclair Companies, or someone designated by him, shall render a decision to the President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, within twenty (20) days after grievances or disputes have been so submitted to him in writing.

"7. If such decision is not satisfactory, then, upon request of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO and within sixty (60) days

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from the posting date of the final appeal answer, there shall be set up a local Arbitration Board, and such grievances and disputes submitted to it within ten (10) days after formation of such Board. Such local boards may be set up at each refinery to deal with cases arising therefrom; cases arising from Sinclair Oil & Gas Company shall be heard and determined at Tulsa, Oklahoma; Fort Worth, Texas; Midland, Texas; or Casper, Wyoming; cases arising from Sinclair Pipe Line Company shall be heard and determined at the cities previously named or at Kansas City, Missouri; Toledo, Ohio; Houston, Texas; Chicago, Illinois; Philadelphia, Pennsylvania; or Independence, Kansas. These local Arbitration Boards shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement, or supplements thereto, and local wage and classification disputes submitted on the initiative of the President or any District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. In this connection, Employer agrees to give consideration to local classification rate inequity complaints existing by reason of a comparison with the average of competitive rates of pay for like jobs having comparable duties and responsibilities being paid by agreed-upon major competitive companies in the local area. Such requests for adjustments of classification rate inequities, if any, shall be made not more frequently than twice annually, to be effective on February 1st and August 1st. Such requests to be submitted at least thirty (30) days prior to such semi-annual dates.

"8. The above mentioned local Arbitration Board shall be composed of one person designated by Employer and one designated by the President or District Director of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. The board shall be requested by both parties to render a decision within seven (7) days from date of submission. Should the two members of the board selected as above provided, be unable to agree within seven (7) days, or to mutually agree upon an impartial third arbitrator, an impartial third member shall be selected within seven (7) days thereafter by the employer or employee member of the Arbitration Board, or such two parties jointly, requesting the Federal Mediation and Conciliation Service to submit a panel of arbitrators from which the third member of the board will be selected in accordance with the procedure of such Federal Mediation and Conciliation Service.

"9. The decision of the Board aforesaid, as provided in Section 8 hereof, shall be final. However, if the rules and conditions existing

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at the time a given case originated are subsequently changed, it is understood that the arbitration award rendered under former rules and conditions shall not act to prohibit consideration of a complaint originating under the changed rules and conditions.

"10. Cases arising from the Gasoline Plants shall be considered as coming within the Producing Division in which they are located.

"11. The fee and expense of the impartial arbitrator selected as above provided shall be divided equally between the parties to such arbitration. The Parties agree to attempt to hold the arbitrator's fees to a reasonable basis."

SUPREME COURT OF THE UNITED STATES

No. 434.—OCTOBER TERM, 1961.

Sinclair Refining Company,	}	On Writ of Certiorari to the
Petitioner,		United States Court of
v.		Appeals for the Seventh
Samuel M. Atkinson et al.	}	Circuit.

[June 18, 1962.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The question this case presents is whether § 301 of the Taft-Hartley Act, in giving federal courts jurisdiction of suits between employers and unions for breach of collective bargaining agreements,¹ impliedly repealed § 4 of the pre-existing Norris-LaGuardia Act, which, with certain exceptions not here material, barred federal courts from issuing injunctions "in any case involving or growing out of any labor dispute."²

¹ "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 61 Stat. 156, 29 U. S. C. § 185 (a).

² "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(e) Giving publicity to the existence of, or the facts involved in,

The complaint here was filed by the petitioner Sinclair Refining Company against the Oil, Chemical and Atomic Workers International Union and Local 7-210 of that union and alleged: that the International Union, acting by and with the authority of the Local Union and its members, signed a written collective bargaining contract with Sinclair which provided for compulsory, final and binding arbitration of "any difference regarding wages, hours or working conditions between the parties hereto or between the Employer and an employee covered by this working agreement which might arise within any plant or within any region of operations;" that this contract also included express provisions by which the unions agreed that "there shall be no slowdowns for any reason whatsoever" and "no strikes or work stoppages . . . [f]or any cause which is or may be the subject of a grievance;" and that notwithstanding these promises in the collective bargaining contract the members of Local 7-210 had, over a period of some 19 months, engaged in work stoppages and strikes on nine separate occasions, each of which, the complaint charged, grew out of a grievance which could have been submitted to arbitration under the contract and therefore fell squarely within the unions' promises not to strike. This pattern of repeated, deliberate violations of the contract, Sinclair alleged, indicated a complete disregard on the part of the unions for their obligations under the contract and a probability that they would continue to "subvert the provisions of the contract" forbidding strikes over grievances in the future unless they were enjoined from doing so. In this situation Sinclair

any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified" 47 Stat. 70, 29 U. S. C. § 104.

claimed, there was no adequate remedy at law which would protect its contractual rights and the court should therefore enter orders enjoining the unions and their agents "preliminarily at first, and thereafter permanently, from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana refinery covered by the contract between the parties dated August 8, 1957, in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of the said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions."³

The unions moved to dismiss this complaint on the ground that it sought injunctive relief which United States courts, by virtue of the Norris-LaGuardia Act, have no jurisdiction to give. The District Court first denied the motion, but subsequently, upon reconsideration after full oral argument, vacated its original order and granted the unions' motion to dismiss.⁴ In reaching this conclusion, the District Court reasoned that the controversy between Sinclair and the unions was unquestionably a "labor dispute" within the meaning of the Norris-LaGuardia Act and that the complaint therefore came within the proscription of § 4 of that Act which "withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal 'to perform work or remain in any relation of employment' in cases involving *any* labor dis-

³ The suit filed by Sinclair was in three counts, only one of which, Count 3, is involved in this case. Counts 1 and 2, upon which Sinclair prevailed below, are also before the Court in No. 430. See *Atkinson v. Sinclair Refining Co.*, p. —, *post*, decided today.

⁴ 187 F. Supp. 225.

pute.”⁵ The Court of Appeals for the Seventh Circuit affirmed the order of dismissal for the same reasons.⁶ Because this decision presented a conflict with the decision on this same important question by the Court of Appeals for the Tenth Circuit,⁷ we granted certiorari.⁸

We agree with the courts below that this case does involve a “labor dispute” within the meaning of the Norris-LaGuardia Act. Section 13 of that Act expressly defines a labor dispute as including “any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”⁹ Sinclair’s own complaint shows quite plainly that each of the alleged nine work stoppages and strikes arose out of a controversy which was unquestionably well within this definition.¹⁰

⁵ *Id.*, at 228.

⁶ 290 F. 2d 312.

⁷ *Chauffeurs, Teamsters & Helpers Local No. 795 v. Yellow Transit Freight Lines*, 282 F. 2d 345. Both the First and the Second Circuit have also considered this question and both have taken the same position as that taken below. See *W. L. Mead, Inc., v. Teamsters Local No. 25*, 217 F. 2d 6; *Alcoa S. S. Co. v. McMahon*, 173 F. 2d 567; *Third Ave. Transit Corp. v. Quill*, 192 F. 2d 971; *A. H. Bull Steamship Co. v. Seafarers’ International Union*, 250 F. 2d 326.

⁸ 368 U. S. 937.

⁹ 47 Stat. 73, 29 U. S. C. § 113.

¹⁰ The allegations of the complaint with regard to the nine occurrences in question are as follows:

“(a) On or about July 1, 1957, six employees assigned to the #810 Crude Still stopped work in support of an asserted grievance involving the removal of Shift Machinists from the #810 Still area;

“(b) On or about September 17, 1957, all employees employed in the Mason Department refused to work on any shift during the entire day; the entire Mechanical Department refused to work from approximately noon until midnight; the employees of the Barrel House refused to work from the middle of the afternoon until midnight;

Nor does the circumstance that the alleged work stoppages and strikes may have constituted a breach of a collective bargaining agreement alter the plain fact that a "labor dispute" within the meaning of the Norris-

a picket line was created which prevented operators from reporting to work on the 4:00 P. M. to midnight shift, all in support of an asserted grievance on behalf of five apprentice masons for whom insufficient work was available to permit their retention at craft levels.

"(c) On or about March 28, 1958, approximately 73 employees in the Rigging Department refused to work for approximately one hour in support of an asserted grievance that riggers were entitled to do certain work along with machinists.

"(d) On or about May 20, 1958, approximately 24 employees in the Rigging Department refused to work for $1\frac{3}{4}$ hours in support of an asserted grievance that riggers were entitled to do certain work along with boilermakers.

"(e) On or about September 11, 1958, approximately 24 employees in the Rigging Department refused to work for approximately two hours in support of an asserted grievance that pipefitters could not dismantle and remove certain pipe coils without riggers being employed on the said work also.

"(f) On or about October 6 and 7, 1958, approximately 43 employees in the Cranes and Trucks Department refused to work for approximately eight hours in support of an asserted grievance concerning employment by the Company of an independent contractor to operate a contractor owned crane.

"(g) On or about November 19, 1958, approximately 71 employees refused to work for approximately $3\frac{3}{4}$ hours in the Boilermaking Department in support of an asserted grievance that burners and riggers would not dismantle a tank roof without employment of boilermakers at the said task.

"(h) On or about November 21, 1958, in further pursuance of the asserted grievance referred to in subparagraph (g) preceding, the main entrance to the plant was picketed and barricaded, thereby preventing approximately 800 employees from reporting for work for an entire shift.

"(i) On or about February 13 and 14, 1959, approximately 999 employees were induced to stop work over an asserted grievance on behalf of three riggers that they should not have been docked an aggregate of \$2.19 in their pay for having reported late to work."

LaGuardia Act is involved. Arguments to the contrary proceed from the premise that § 2 of that Act, which expresses the public policy upon which the specific anti-injunction provisions of the Act were based, contains language indicating that one primary concern of Congress was to insure workers the right "to exercise actual liberty of contract" and to protect "concerted activities for the purpose of collective bargaining."¹¹ From that premise, Sinclair argues that an interpretation of the term "labor dispute" so as to include a dispute arising out of a union's refusal to abide by the terms of a collective agreement to which it freely acceded is to apply the Norris-LaGuardia Act in a way that defeats one of the purposes for which it was enacted. But this argument, though forcefully urged both here and in much current commentary on this question,¹² rests more upon considerations of what many

¹¹ "In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are enacted." 47 Stat. 70, 29 U. S. C. § 102.

¹² One of the most forthright arguments for judicial re-evaluation of the wisdom of the anti-injunction provisions of the Norris-LaGuardia Act and judicial rather than congressional revision of the meaning and

commentators think would be the more desirable industrial and labor policy in view of their understanding as to the prevailing circumstances of contemporary labor-management relations than upon what is a correct judicial interpretation of the language of the Act as it was written by Congress.

In the first place, even the general policy declarations of § 2 of the Norris-LaGuardia Act, which are the foundation of this whole argument, do not support the conclusion urged. That section does not purport to limit the Act to the protection of collective bargaining but, instead, expressly recognizes the need of the anti-injunction provisions to insure the right of workers to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." Moreover, the language of the specific provisions of the Act is so broad and inclusive that it leaves not the slightest opening for reading in any exceptions beyond those clearly written into it by Congress itself.¹³

scope of these provisions as applied to conduct in breach of a collective bargaining agreement is presented in Gregory, *The Law of the Collective Agreement*, 57 Mich. L. Rev. 635. That author, in urging that a strike in breach of a collective agreement should not now be held to involve or grow out of a "labor dispute" within the meaning of the Norris-LaGuardia Act, states: "After all, 1932 was a long time ago and conditions have changed drastically. Judges who still confuse violations of collective agreements with § 13 labor disputes and § 4 conduct have, in my opinion, lost contact with reality. The passage of time has operated as a function of many other types of judicial output at the highest level. I do not see why it should not do so in this instance, as well. *Id.*, at 645-646, n. 39. See also Stewart, *No-Strike Clauses in the Federal Courts*, 59 Mich. L. Rev. 673, especially at 683; Rice, *A Paradox of our National Labor Law*, 34 Marq. L. Rev. 233.

¹³ Thus we conclude here precisely as we did in *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323, 330: "We find nothing in the declarations of policy which narrows the definition of a labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined."

We cannot ignore the plain import of a congressional enactment, particularly one which, as we have repeatedly said, was deliberately drafted in the broadest of terms in order to avoid the danger that it would be narrowed by judicial construction.¹⁴

Since we hold that the present case does grow out of a "labor dispute," the injunction sought here runs squarely counter to the proscription of injunctions against strikes contained in § 4 (a) of the Norris-LaGuardia Act, to the proscription of injunctions against peaceful picketing contained in § 4 (e) and to the proscription of injunctions prohibiting the advising of such activities contained in § 4 (i).¹⁵ For these reasons, the Norris-LaGuardia Act deprives the courts of the United States of jurisdiction to enter that injunction unless, as is contended here, the scope of that Act has been so narrowed by the subsequent enactment of § 301 of the Taft-Hartley Act that it no longer prohibits even the injunctions specifically described in § 4 where such injunctions are sought as a remedy for breach of a collective bargaining agreement. Upon consideration, we cannot agree with that view and agree instead with the view expressed by the courts below and supported by the Courts of Appeals for the First and Second Circuits that § 301 was not intended to have any such partially repealing effect upon such a long-standing, carefully thought out and highly significant part of this country's labor legislation as the Norris-LaGuardia Act.¹⁶

¹⁴ *United States v. Hutcheson*, 312 U. S. 219, 234, and cases cited therein.

¹⁵ See note 2, *supra*.

¹⁶ We need not here again go into the history of the Norris-LaGuardia Act nor the abuses which brought it into being for that has been amply discussed on several occasions. See Frankfurter and Greene, *The Labor Injunction*. And see *e. g.*, *United States v. Hutcheson*, 312 U. S. 219, 235-236; *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, 102-103. It is

The language of § 301 itself seems to us almost if not entirely conclusive of this question. It is especially significant that the section contains no language that could by any stretch of the imagination be interpreted to constitute an explicit repeal of the anti-injunction provisions of the Norris-LaGuardia Act in view of the fact that the section does expressly repeal another provision of the Norris-LaGuardia Act dealing with union responsibility for the acts of agents.¹⁷ If Congress had intended that § 301 suits should also not be subject to the anti-injunction provisions of the Norris-LaGuardia Act, it certainly seems likely that it would have made its intent known in this same express manner. That is indeed precisely what Congress did do in §§ 101 (h) and 208 (b) of the Taft-Hartley Act, by permitting injunctions to be obtained, not by private litigants, but only at the instance of the National Labor Relations Board and the Attorney General,¹⁸ and in § 302 (e), by permitting private litigants to

sufficient here to note that the reasons which led to the passage of the Act were substantial and that the Act has been an important part of the pattern of legislation under which unions have functioned for nearly 30 years.

¹⁷ Section 301 (e) of the Act, 61 Stat. 156, 29 U. S. C. § 185 (e), provides: "For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." This, of course, was designed to and did repeal for purposes of suits under § 301 the previously controlling provisions of § 6 of the Norris-LaGuardia Act, 47 Stat. 71, 29 U. S. C. § 106: "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

¹⁸ 61 Stat. 146, 155, as amended, 29 U. S. C. §§ 160 (h), 178 (b).

obtain injunctions in order to protect the integrity of employees' collective bargaining representatives in carrying out their responsibilities.¹⁹ Thus the failure of Congress to include a provision in § 301 expressly repealing the anti-injunction provisions of the Norris-LaGuardia Act must be evaluated in the context of a statutory pattern that indicates not only that Congress was completely familiar with those provisions but also that it regarded an express declaration of inapplicability as the normal and proper manner of repealing them in situations where such repeal seemed desirable.

When the inquiry is carried beyond the language of § 301 into its legislative history, whatever small doubts as to the congressional purpose could have survived consideration of the bare language of the section should be wholly dissipated. For the legislative history of § 301 shows that Congress actually considered the advisability of repealing the Norris-LaGuardia Act insofar as suits based upon breach of collective bargaining agreements are concerned and deliberately chose not to do so.²⁰ The

¹⁹ 61 Stat. 157, 29 U. S. C. § 186 (e). That this section, which stands alone in expressly permitting suits for injunctions previously proscribed by the Norris-LaGuardia Act to be brought in the federal courts by private litigants under the Taft-Hartley Act, deals with an unusually sensitive and important problem is shown by the fact § 186 makes the conduct so enjoinable a crime punishable by both fine and imprisonment.

²⁰ This fact was expressly recognized by the Court of Appeals for the Second Circuit in *A. H. Bull Steamship Co. v. Seafarers' International Union*, 250 F. 2d 326, 331-332. See also *W. L. Mead, Inc., v. Teamsters Local No. 25*, 217 F. 2d 6, 9-10; Comment, *Labor Injunctions and Judge-Made Law: The Contemporary Role of Norris-LaGuardia*, 70 Yale L. J. 70, 97-99. Another commentator, though urging his own belief that a strike in breach of a collective agreement is not a "labor dispute" within the Norris-LaGuardia Act, nevertheless admits that Congress thought it was and deliberately decided to leave the anti-injunction provisions of that Act applicable to § 301 suits. See Rice, *A Paradox of our National Labor Law*, 34 Marq. L. Rev. 233, 235.

section as eventually enacted was the product of a conference between Committees of the House and Senate, selected to resolve the differences between conflicting provisions of the respective bills each had passed. Prior to this conference, the House bill had provided for federal jurisdiction of suits for breach of collective bargaining contracts and had expressly declared that the Norris-LaGuardia Act's anti-injunction provisions would not apply to such suits.²¹ The bill passed by the Senate, like the House bill, granted federal courts jurisdiction over suits for breach of such agreements but it did not, like the House bill, make the Norris-LaGuardia Act's prohibition against injunctions inapplicable to such suits.²² Instead it made breach of a collective agreement an unfair labor practice.²³ Under the Senate version, therefore, a breach of a collective bargaining agreement, like any unfair labor practice, would have been enjoined by a suit brought by

²¹ H. R. 3020, 80th Cong., 1st Sess., as it passed the House, provided:

"Sec. 302. (a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction of the cause.

"(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes,' shall not have any application in respect of either party." I Legislative History of the Labor Management Relations Act, 1947, 221-222.

²² This is true both of the original Senate bill, S. 1126, as reported and of the amended House bill, H. R. 3020, as passed by the Senate. I Leg. Hist. 151-152; I Leg. Hist. 279-280.

²³ I Leg. Hist. 111-112, 114, 239, 241-242.

the National Labor Relations Board,²⁴ but no provision of the Senate version would have permitted the issuance of an injunction in a labor dispute at the suit of a private party. At the conference the provision of the House bill expressly repealing the anti-injunction provisions of the Norris-LaGuardia Act, as well as the provision of the bill passed by the Senate declaring the breach of a collective agreement to be an unfair labor practice, was dropped and never became law. Instead, the conferees, as indicated by the provision which came out of the conference and eventually became § 301, agreed that suits for breach of such agreements should remain wholly private and "be left to the usual processes of the law"²⁵ and that, in view of the fact that these suits would be at the instance of private parties rather than at the instance of the Labor Board, no change in the existing anti-injunction provisions of the Norris-LaGuardia Act should be made. The House Conference Report expressly recognized that the House provision for repeal in contract actions of the anti-injunction prohibitions of the Norris-LaGuardia Act had been eliminated in Conference:

"Section 302 (e) of the House Bill made the Norris-LaGuardia Act inapplicable in actions and proceedings involving violations of agreements between an employer and a labor organization. Only part of this provision is included in the conference agreement. Section 6 of the Norris-LaGuardia Act provides that no employer or labor organization participating or interested in a labor dispute shall be held responsible for the unlawful acts of their agents

²⁴ In such a situation, suit for injunction would be brought by the Board and, by virtue of § 10 (h) of the Act, 61 Stat. 146, 29 U. S. C. § 160 (h), the Norris-LaGuardia Act would not apply.

²⁵ H. R. Conf. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., pp. 41-42, 1 Leg. Hist. 545-546.

except upon clear proof of actual authorization of such acts, or ratification of such acts after actual knowledge thereof. This provision in the Norris-LaGuardia Act was made inapplicable under the House bill. Section 301 (e) of the conference agreement provides that for the purposes of section 301 in determining whether any person is acting as an agent of another so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."²⁶

And Senator Taft, Chairman of the Conference Committee and one of the authors of this legislation that bore his name, was no less explicit in explaining the results of the Conference to the Senate: "The conferees . . . rejected the repeal of the Norris-LaGuardia Act."²⁷

²⁶ H. R. Conf. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., p. 66, I Leg. Hist. 570.

²⁷ 93 Cong. Rec. 6603, II Leg. Hist. 1544. Immediately prior to this remark, Senator Taft had inserted into the Record a written summary of his understanding as to the effect of the conference upon the bill passed by the Senate: "When the bill passed the Senate it also contained a sixth paragraph in this subsection [8 (a)] which made it an unfair labor practice for an employer to violate the terms of a collective-bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration. The House conferees objected to this provision on the ground that it would have the effect of making the terms of every collective agreement subject to interpretation and determination by the Board, rather than by the courts. The Senate conferees ultimately agreed to its elimination as well as the decision of a similar provision contained in subsection 8 (b) (5) of the Senate amendment which made it an unfair labor practice for a labor organization to violate the terms of collective-bargaining agreements. The provisions of the Senate amendment *which conferred a right of action for damages* upon a party aggrieved by breach of a collective-bargaining contract, however, were retained in the conference agreement (section 301)." 93 Cong. Rec. 6600, II Leg. Hist. 1539. (Emphasis supplied.)

We cannot accept the startling argument made here that even though Congress did not itself want to repeal the Norris-LaGuardia Act, it was willing to confer a power upon the courts to "accommodate" that Act out of existence whenever they might find it expedient to do so in furtherance of some policy they had fashioned under § 301. The unequivocal statements in the House Conference Report and by Senator Taft on the floor of the Senate could only have been accepted by the Congressmen and Senators who read or heard them as assurances that they could vote in favor of § 301 without altering, reducing or impairing in any manner the anti-injunction provisions of the Norris-LaGuardia Act. This is particularly true of the statement of Senator Taft, a man generally regarded in the Senate as a very able lawyer and one upon whom the Senate could rely for accurate, forthright explanations of legislation with which he was connected. Senator Taft was of course entirely familiar with the prohibitions of the Norris-LaGuardia Act and the impact those prohibitions would have upon the enforcement under § 301 of all related contractual provisions, including contractual provisions dealing with arbitration. If, as this argument suggests, the intention of Congress in enacting § 301 was to clear the way for judicial obliteration of that Act under the soft euphemism of "accommodation," Senator Taft's flat statement that the Conference had rejected the repeal of the Norris-LaGuardia Act could only be regarded as disingenuous. We cannot impute any such intention to him.

Moreover, we think that the idea that § 301 sanctions piecemeal judicial repeal of the Norris-LaGuardia Act requires acceptance of a wholly unrealistic view of the manner in which Congress handles its business. The question of whether existing statutes should be continued in force or repealed is, under our system of government, one which is wholly within the domain of Congress.

When the repeal of a highly significant law is urged upon that body and that repeal is rejected after careful consideration and discussion, the normal expectation is that courts will be faithful to their trust and abide by that decision. This is especially so where the fact of the controversy over repeal and the resolution of that controversy in Congress plainly appears in the formal legislative history of its proceedings.²⁸ Indeed, not a single instance has been called to our attention in which a carefully considered and rejected proposal for repeal has been revived and adopted by this Court under the guise of "accommodation" or any other pseudonym.

Nor have we found anything else in the previous decisions of this Court that would indicate that we should disregard all this overwhelming evidence of a congressional intent to retain completely intact the anti-injunction prohibitions of the Norris-LaGuardia Act in suits brought under § 301. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R. Co.*,²⁹ upon which Sinclair places its primary reliance, is distinguishable on several grounds. There we were dealing with a strike called by the union in defiance of an affirmative duty, imposed upon the union

²⁸ The legislative history of the Taft-Hartley Act shows that Congress actually considered and relied upon this normal functioning of the judicial power as insuring that no unintended repeal of the anti-injunction provisions of the Norris-LaGuardia Act would be declared. Thus Senator Taft, when pressed by Senator Morse with regard to the possibility that a provision inserted in § 303 (a) declaring secondary boycotts unlawful might be held to justify an injunction previously forbidden by the Norris-LaGuardia Act, stated: "Let me say in reply to the Senator or anyone else who makes the same argument, that that is not the intention of the author of the amendment. It is not his belief as to the effect of it. It is not the advice of counsel to the committee. Under those circumstances, I do not believe that any court would construe the amendment along the lines suggested by the Senator from Oregon." 93 Cong. Rec. 5074, II Leg. Hist. 1396.

²⁹ 353 U. S. 30.

by the Railway Labor Act itself, compelling unions to settle disputes as to the interpretation of an existing collective bargaining agreement, not by collective union pressures on the railroad but by submitting them to the Railroad Adjustment Board as the exclusive means of final determination of such "minor" disputes.³⁰ Here, on the other hand, we are dealing with a suit under a quite different law which does not itself compel a particular, exclusive method for settling disputes nor impose any requirement, either upon unions or employers, or upon the courts, that is in any way inconsistent with a continuation of the Norris-LaGuardia Act's proscription of federal labor injunctions against strikes and peaceful picketing. In addition, in *Chicago River* we were dealing with a statute that had a far different legislative history than the one now before us. Thus there was no indication in the legislative history of the Railway Labor Act, as there is in the history of § 301, that Congress had, after full debate and careful consideration by both Houses and in Joint Conference, specifically rejected proposals to make the prohibitions of the Norris-LaGuardia Act inapplicable. Indeed, the Court was able to conclude in *Chicago River* "that there was general understanding between both the supporters and the opponents of the 1934 amendment that the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field."³¹ And certainly no one could contend that § 301 was intended to set up any such system of "compulsory arbitration" as the exclusive

³⁰ The Court in *Chicago River* expressly recognized and rested its decision upon the differences between provisions for the settlement of disputes under the Railway Labor Act and the Taft-Hartley Act. *Id.*, at 31-32, n. 2. See also *Order of Railroad Telegraphers v. Chicago & Northwestern R. Co.*, 362 U. S. 330, 338-340.

³¹ 353 U. S. 30, at 39.

method for settling grievances under the Taft-Hartley Act.

Textile Workers Union v. Lincoln Mills,³² upon which some lesser reliance is placed, is equally distinguishable. There the Court held merely that it did not violate the anti-injunction provisions of the Norris-LaGuardia Act to compel the parties to a collective bargaining agreement to submit a dispute which had arisen under that agreement to arbitration where the agreement itself required arbitration of the dispute. In upholding the jurisdiction of the federal courts to issue such an order against a challenge based upon the Norris-LaGuardia Act, the Court pointed out that the equitable relief granted in that case—a mandatory injunction to carry out an agreement to arbitrate—did not enjoin any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of United States courts.³³ An injunction against work stoppages, peaceful picketing or the nonfraudulent encouraging of those activities would, however, prohibit the precise kinds of conduct which subsections (a), (e) and (i) of § 4 of the Norris-LaGuardia Act unequivocally say cannot be prohibited.³⁴

³² 353 U. S. 448.

³³ *Id.*, at 458. See also *Order of Railroad Telegraphers v. Chicago & Northwestern R. Co.*, 362 U. S. 330, 338-339, where *Lincoln Mills* and other cases not involving an injunction against activity protected by § 4 of the Norris-LaGuardia Act were distinguished on this ground.

³⁴ An injunction against a strike or peaceful picketing in breach of a collective agreement "would require strong judicial creativity in the face of the plain meaning of Section 4," Cox, *Current Problems in the Law of Grievance Arbitration*, 30 *Rocky Mountain L. Rev.* 247, 256, for, indeed, such an injunction "would fly in the face of the plain words of Section 4 of Norris-LaGuardia Act, the historical purpose of which was to make peaceful concerted activities unenjoinable without regard to the nature of the labor dispute." *Id.*, at 253.

Nor can we agree with the argument made in this Court that the decision in *Lincoln Mills*, as implemented by the subsequent decisions in *United Steelworkers v. American Manufacturing Co.*,³⁵ *United Steelworkers v. Warrior & Gulf Navigation Co.*,³⁶ and *United Steelworkers v. Enterprise Wheel & Car Corp.*,³⁷ requires us to reconsider and overrule the action of Congress in refusing to repeal or modify the controlling commands of the Norris-LaGuardia Act. To the extent that those cases relied upon the proposition that the arbitration process is "a kingpin of federal labor policy," we think that proposition was founded not upon the policy predilections of this Court but upon what Congress said and did when it enacted § 301. Certainly we cannot accept any suggestion which would undermine those cases by implying that the Court went beyond its proper power and itself "forged . . . a kingpin of federal labor policy" inconsistent with that section and its purpose. Consequently, we do not see how cases implementing the purpose of § 301 can be said to have freed this Court from its duty to give effect to the plainly expressed congressional purpose with regard to the continued application of the anti-injunction provisions of the Norris-LaGuardia Act. The argument to the contrary seems to rest upon the notion that injunctions against peaceful strikes are necessary to make the arbitration process effective. But whatever might be said about the merits of this argument, Congress has itself rejected it. In doing so, it set the limit to which it was willing to go in permitting courts to effectuate the congressional policy favoring arbitration and it is not this Court's business to review the wisdom of that decision.

³⁵ 363 U. S. 564.

³⁶ 363 U. S. 574.

³⁷ 363 U. S. 593.

The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the "congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes"³⁸ at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement. At the most, what is involved is the question of whether the employer is to be allowed to enjoy the benefits of an injunction along with the right which Congress gave him in § 301 to sue for breach of a collective agreement. And as we have already pointed out, Congress was not willing to insure that enjoyment to an employer at the cost of putting the federal courts back into the business of enjoining strikes and other related peaceful union activities.

It is doubtless true, as argued, that the right to sue which § 301 gives employers would be worth more to them if they could also get a federal court injunction to bar a breach of their collective bargaining agreements. Strong arguments are made to us that it is highly desirable that the Norris-LaGuardia Act be changed in the public interest. If that is so, Congress itself might see fit to change that law and repeal the anti-injunction provisions of the Act insofar as suits for violation of collective agreements are concerned, as the House bill under consideration originally provided. It might, on the other hand, decide that if injunctions are necessary, the whole idea of enforcement of these agreements by private suits should be discarded in favor of enforcement through the administrative machinery of the Labor Board, as Senator Taft pro-

³⁸ *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, at 458-459.

vided in his Senate bill. Or it might decide that neither of these methods is entirely satisfactory and turn instead to a completely new approach. The question of what change, if any, should be made in the existing law is one of legislative policy properly within the exclusive domain of Congress—it is a question for law-makers, not law-interpreters. Our task is the more limited one of interpreting the law as it now stands. In dealing with problems of interpretation and application of federal statutes, we have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers. Where congressional intent is discernible—and here it seems crystal clear—we must give effect to that intent.”

The District Court was correct in dismissing Count 3 of petitioner's complaint for lack of jurisdiction under the Norris-LaGuardia Act. The judgment of the Court of Appeals affirming that order is therefore

Affirmed.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.

” We have not ignored Sinclair's argument that to apply the Norris-LaGuardia Act here would deprive it of its constitutional right to equal protection of the law, both because of an allegedly unlawful discrimination between Taft-Hartley Act employers and Railway Labor Act employers by virtue of the decision in *Chicago River*, and because of an allegedly unlawful discrimination between Taft-Hartley Act employers and unions by virtue of the decision in *Lincoln Mills*. We deem it sufficient to say that we do not find either of these arguments compelling.

SUPREME COURT OF THE UNITED STATES

No. 434.—OCTOBER TERM, 1961.

Sinclair Refining Company,	} On Writ of Certiorari to the	
Petitioner,		United States Court of
v.		Appeals for the Seventh
Samuel M. Atkinson et al.	} Circuit.	

[June 18, 1962.]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE HARLAN join, dissenting.

I believe that the Court has reached the wrong result because it has answered only the first of the questions which must be answered to decide this case. Of course § 301 of the Taft-Hartley Act did not, for purposes of actions brought under it, "repeal" § 4 of the Norris-LaGuardia Act. But the two provisions do coexist, and it is clear beyond dispute that they apply to the case before us in apparently conflicting senses. Our duty, therefore, is to seek out that accommodation of the two which will give the fullest possible effect to the central purposes of both. Since such accommodation is possible, the Court's failure to follow that path leads it to a result—not justified by either the language or history of § 301—which is wholly at odds with our earlier handling of directly analogous situations and which cannot be woven intelligibly into the broader fabric of related decisions.

I.

Section 301 of the Taft-Hartley Act, enacted in 1947, authorizes Federal District Courts to entertain "[s]uits for violation of contracts between an employer and a labor organization" It does not in terms address itself to the question of remedies. As we have construed § 301, it casts upon the District Courts a special responsibility to carry out contractual schemes for arbitration, by hold-

ing parties to that favored process for settlement when it has been contracted for, and by then regarding its result as conclusive.¹ At the same time, § 4 of the Norris-LaGuardia Act, enacted in 1932, proscribes the issuance by federal courts of injunctions against various concerted activities "in any case involving or growing out of any labor dispute." But the enjoining of a strike over an arbitrable grievance may be indispensable to the effective enforcement of an arbitration scheme in a collective agreement; thus the power to grant that injunctive remedy may be essential to the uncrippled performance of the Court's function under § 301.² Therefore, to hold that § 301 did not repeal § 4 is only a beginning. Having so held, the Court should—but does not—go on to consider how it is to deal with the surface conflict between the two statutory commands.

The Court has long acted upon the premise that the Norris-LaGuardia Act does not stand in isolation. It is one of several statutes which, taken together, shape the national labor policy. Accordingly, the Court has recognized that Norris-LaGuardia does not invariably bar injunctive relief when necessary to achieve an important objective of some other statute in the pattern of labor

¹ *Textile Workers v. Lincoln Mills*, 353 U. S. 448; *Steelworkers v. American Mfg. Co.*, 363 U. S. 564; *Steelworkers v. Warrior & Gulf Co.*, 363 U. S. 574; *Steelworkers v. Enterprise Corp.*, 363 U. S. 593.

² In *Teamsters Local v. Lucas Flour Co.*, 369 U. S. 95, we held that a strike over a dispute which a contract provides shall be settled exclusively by binding arbitration is a breach of contract despite the absence of a no-strike clause, saying, at p. 105: "To hold otherwise would obviously do violence to accepted principles of traditional contract law. Even more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." And in *Brotherhood of Railroad Trainmen v. Chicago River R. Co.*, 353 U. S. 30, 39, we recognized that allowing a strike over an arbitrable dispute would effectively "defeat the jurisdiction" of the arbitrator.

laws. See *Brotherhood of Railroad Trainmen v. Chicago River R. Co.*, 353 U. S. 30; *Graham v. Brotherhood of Locomotive Firemen*, 338 U. S. 232; *Virginian R. Co. v. System Federation*, 300 U. S. 515, 562-563. In *Chicago River* we insisted that there "must be an accommodation of [the Norris-LaGuardia Act] and the Railway Labor Act to that the obvious purpose in the enactment of each is preserved."³

These decisions refusing inflexible application of Norris-LaGuardia point to the necessity of a careful inquiry whether the surface conflict between § 301 and § 4 is irreconcilable in the setting before us: a strike over a grievance which both parties have agreed to settle by binding arbitration. I think that there is nothing in either the language of § 301 or its history to prevent § 4's here being accommodated with it, just as § 4 was accommodated with the Railway Labor Act.

II.

It cannot be denied that the availability of the injunctive remedy in this setting is far more necessary to the accomplishment of the purposes of § 301 than it would be detrimental to those of Norris-LaGuardia. *Chicago River* makes this plain. We there held that the federal courts, notwithstanding Norris-LaGuardia, may enjoin strikes over disputes as to the interpretation of an existing collective agreement, since such strikes flout the duty imposed on the union by the Railway Labor Act to settle such "minor disputes" by submission to the National Railroad Adjustment Board rather than by concerted economic pressures. We so held, even though the Railway Labor Act contains no express prohibition of strikes over "minor disputes," because we found it essential to the meaningful enforcement of that Act—and because the

³ 353 U. S., at 40.

existence of mandatory arbitration eliminated one of the problems to which Norris-LaGuardia was chiefly addressed, namely, that "the injunction strips labor of its primary weapon without substituting any reasonable alternative."⁴

That reasoning is applicable with equal force to an injunction under § 301 to enforce a union's contractual duty, also binding on the employer, to submit certain disputes to terminal arbitration and to refrain from striking over them. The federal law embodied in § 301 stresses the effective enforcement of such arbitration agreements. When one of them is about to be sabotaged by a strike, § 301 has as strong a claim upon an accommodating interpretation of § 4 as does the compulsory arbitration law of the Railway Labor Act. It is equally true in both cases that "[an injunction] alone can effectively guard the plaintiff's right," *Machinists v. Street*, 367 U. S. 740, 773. It is equally true in both cases that the employer's specifically enforceable obligation to arbitrate provides a "reasonable alternative" to the strike weapon. It is equally true in both cases that a major contributing cause to the enactment of Norris-LaGuardia—the at-largeness of federal judges in enjoining activities thought to seek "unlawful ends" or to constitute "unlawful means"⁵—is not involved. Indeed, there is in this case a factor weighing in favor of the issuance of an injunction which was not present in *Chicago River*:⁶ the express contractual commitment of the union to refrain from striking, viewed in light of the overriding purpose of § 301 to assist the enforcement of collective agreements.

⁴ *Id.*, at 41.

⁵ See, e. g., S. Rep. No. 163, 72d Cong., 1st Sess., p. 18; Frankfurter and Greene, *The Labor Injunction*, pp. 24-46, 200, 202.

⁶ It is worth repeating that the Railway Labor Act incorporates no express prohibition of strikes over "minor disputes."

In any event, I should have thought that the question was settled by *Textile Workers v. Lincoln Mills*, 353 U. S. 448. In that case, the Court held that the procedural requirements of Norris-LaGuardia's § 7, although in terms fully applicable, would not apply so as to frustrate a federal court's effective enforcement under § 301 of an employer's obligation to arbitrate. It is strange, I think, that § 7 of the Norris-LaGuardia Act need not be read, in the face of § 301, to impose inapt procedural restrictions upon the specific enforcement of an employer's contractual duty to arbitrate; but that § 4 must be read, despite § 301, to preclude absolutely the issuance of an injunction against a strike which ignores a union's identical duty.

III.

The legislative history of § 301 affords the Court no refuge from the compelling effect of our prior decisions. That history shows that Congress considered and rejected "the advisability of repealing the Norris-LaGuardia Act insofar as suits based upon breach of collective bargaining agreements are concerned" ⁷ But congressional rejection of outright repeal certainly does not imply hostility to an attempt by the courts to accommodate all statutes pertinent to the decision of cases before them. Again, the Court's conclusion stems from putting the wrong question. When it is appreciated that there is no question here of "repeal," but rather one of how the Court is to apply the whole statutory complex to the case before it, it becomes clear that the legislative history does not support the Court's conclusion. First, however, it seems appropriate to discuss, as the Court has done, the language of § 301 considered in light of other provisions of the statute.

⁷ *Ante*, p. —.

There is nothing in the words of § 301 which so much as intimates any limitation to damage remedies when the asserted breach of contract consists of concerted activity. The section simply authorizes the District Courts to entertain and decide suits for violation of collective contracts. Taking the language alone, the irresistible implication would be that the District Courts were to employ their regular arsenal of remedies appropriately to the situation. That would mean, of course, that injunctive relief could be afforded when damages would not be an adequate remedy. This much, surely, is settled by *Lincoln Mills*. But the Court reasons that the failure of § 301 explicitly to repeal § 4 of Norris-LaGuardia completely negates the availability of injunctive relief in any case where that provision—in the absence of § 301—would apply. That reasoning stems from attaching undue significance to the fact that express repeal of Norris-LaGuardia provisions may be found in certain other sections of the Taft-Hartley Act—from which the Court concludes “not only that Congress was completely familiar with those provisions but also that it regarded an express declaration of inapplicability as the normal and proper manner of repealing them *in situations where such repeal seemed desirable*.”^{*} Even on this analysis the most that can be deduced from such a comparative reading is that while repeal of Norris-LaGuardia seemed desirable to Congress in certain other contexts, repeal did not seem desirable in connection with § 301.

Sound reasons explain why repeal of Norris-LaGuardia provisions, acceptable in other settings, might have been found ill-suited for the purpose of § 301. And those reasons fall far short of a design to preclude absolutely the issuance under § 301 of any injunction against an activity included in § 4 of Norris-LaGuardia. Section 10 (h) of

^{*} *Ante*, p. —. (Emphasis added.)

the Act⁹ simply lifts the § 4 barrier in connection with proceedings brought by the National Labor Relations Board—in the Courts of Appeals for enforcement of Board cease-and-desist orders against unfair labor practices, and in the District Courts for interlocutory relief against activities being prosecuted before the Board as unfair labor practices. This repeal in aid of government litigation to enforce carefully drafted prohibitions already in the Act as unfair labor practices was, obviously, entirely appropriate, definitely limited in scope, predictable in effect, and devoid of any risk of abuse or misunderstanding. Much the same is true of § 208 (b) of Taft-Hartley,¹⁰ which simply repeals Norris-LaGuardia in a case where the Attorney General seeks an injunction at the direction of the President, who must be of the opinion—after having been advised by a board of inquiry—that continuation of the strike in question would imperil the national health and safety.

Only in § 302 (e) of Taft-Hartley¹¹ is there found a repeal of Norris-LaGuardia's anti-injunction provisions in favor of a suit by a private litigant.¹² The District Courts are there authorized to restrain the payment by employers and the acceptance by employee representatives of unauthorized payments in the nature of bribes. Not only is the problem thus dealt with "unusually sensitive and important," as the Court notes;¹³ but the repeal of Norris-LaGuardia is clearly, predictably, and narrowly

⁹ National Labor Relations Act, § 10 (h), 61 Stat. 149, 29 U. S. C. § 160 (h).

¹⁰ 61 Stat. 155, 29 U. S. C. § 178.

¹¹ 61 Stat. 158, 29 U. S. C. § 186 (e).

¹² Section 301 (e), 61 Stat. 157, 29 U. S. C. § 185 (e), also mentioned by the Court, has no bearing on injunction problems. It repeals, for its purposes, § 6 of the Norris-LaGuardia Act, which deals with agency responsibility for concerted activities. Its only relevance here is in showing what is clear anyway: That § 301 effected no repeal of the anti-injunction provisions of Norris-LaGuardia.

¹³ *Ante*, p. —.

confined to one kind of suit over one kind of injury; and obviously it presents no possible threat to the important purposes of that Act.

How different was the problem posed by § 301, which broadly authorized District Courts to decide suits for breach of contract. The Congress understandably may not have felt able to predict what provisions would crop up in collective bargaining agreements, to foresee the settings in which these would become subjects of litigation, or to forecast the rules of law which the courts would apply. The consequences of repealing the anti-injunction provisions in this context would have been completely unknowable, and outright repeal, therefore, might well have seemed unthinkable. Congress, clearly, had no intention of abandoning wholesale the Norris-LaGuardia policies in contract suits; but it does not follow that § 301 is not the equal of § 4 in cases which implicate both provisions.

Indeed, it might with as much force be said that Congress knew well how to limit remedies against employee activities to damages when that was what it intended, as that Congress knew how to repeal Norris-LaGuardia when *that* was what it intended. Section 303 of Taft-Hartley¹⁴ authorizes private actions *for damages* resulting from certain concerted employee activities. When that section was introduced on the Senate floor, it provided for injunctive relief as well. Extended debate revealed strong sentiment against the injunction feature, which incorporated a repeal of Norris-LaGuardia. The section's supporters, therefore, proposed a different version which provided for damages only. In this form, the section was adopted by the Senate—and later by the Conference and the House.¹⁵ Certainly, after this experience

¹⁴ 29 U. S. C. § 187.

¹⁵ See II Leg. Hist. 1323-1400; I Leg. Hist. 571.

Congress would have used language confining § 301 to damage remedies when it was invoked against concerted activity, if such had been the intention.

The statutory language thus fails to support the Court's position. The inference is at least as strong that Congress was content to rely upon the courts to resolve any seeming conflicts between § 301 and § 4 as they arose in the relatively manageable setting of particular cases, as that Congress intended to limit to damages the remedies courts could afford against concerted activities under § 301. The Court then should so exercise its judgment as best to effect the most important purposes of each statute. It should not be bound by inscrutable congressional silence to a wooden preference for one statute over the other.

Nor does the legislative history of § 301 suggest any different conclusion. As the Court notes, the House version would have repealed Norris-LaGuardia in suits brought under the new section.¹⁶ The Senate version of § 301, like the section as enacted, did not deal with Norris-LaGuardia, but neither did it limit the remedies available against concerted activity.¹⁷ Thus any attempt to ascertain the Senate's intention would face the same choices as those I have suggested in dealing with the language of § 301 as finally enacted. It follows that to construe the Conference Committee's elimination of the House repeal as leaving open the possibility of judicial accommodation is at least as reasonable as to conclude that Congress, by its silence, was directing the courts to disregard § 301 whenever opposition from § 4 was encountered.¹⁸

¹⁶ I Leg. Hist. 221-222.

¹⁷ I Leg. Hist. 279-280.

¹⁸ There is nothing in any Committee Report, or in any floor debate, which even intimates a confinement of § 301 remedies to damages in cases involving concerted activities. The only bit of legislative his-

I emphasize that the question in this case is not whether the basic policy embodied in Norris-LaGuardia against the injunction of activities of labor unions has been abandoned in actions under § 301; the question is simply whether injunctions are barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer. Enforced adherence to such arbitration commitments has emerged as a dominant motif in the developing federal law of collective bargaining agreements. But there is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law. But there may be no such threat if the union has made no binding agreement to arbitrate; and if the employer cannot be compelled to arbitrate, restraining the strike would cut deep into the core of Norris-LaGuardia. Therefore, unless both parties are so bound, limiting an employer's remedy to damages might well be appropriate. The susceptibility of particular concrete situations to this sort of analysis shows that rejection of an outright repeal of § 4 was wholly consistent with acceptance of a technique of accommodation which would lead, in some cases, to the granting of injunctions against concerted activity. Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas, not vital to its ends,

tory which could be the statement of Senator Taft, quoted by the Court at note 27 of its opinion, which he inserted into the Congressional Record. What little significance that isolated insertion might have had has, of course, been laid to rest by *Lincoln Mills*.

where injunctive relief is vital to a purpose of § 301; it does not require unconditional surrender.

IV.

Today's decision cannot be fitted harmoniously into the pattern of prior decisions on analagous and related matters. Considered in their light, the decision leads inescapably to results consistent neither with any imaginable legislative purpose nor with sound judicial administration.

We have held that uniform doctrines of federal labor law are to be fashioned judicially in suits brought under § 301, *Textile Workers v. Lincoln Mills*, 353 U. S. 448; that actions based on collective agreements remain cognizable in state as well as federal courts, *Dowd Box Co. v. Courtney*, 368 U. S. 502; and that state courts must apply federal law in such actions, *Teamsters Local v. Lucas Flour Co.*, 369 U. S. 95.

The question arises whether today's prohibition of injunctive relief is to be carried over to state courts as a part of the federal law governing collective agreements. If so, § 301, a provision plainly designed to enhance the responsibility of unions to their contracts, will have had opposite effect of depriving employers of a state remedy they enjoyed prior to its enactment.

On the other hand if, as today's literal reading suggests¹⁹ and as a leading state decision holds,²⁰ States remain free to apply their injunctive remedies against concerted activities in breach of contract, the development of a uniform body of federal contract law is in for hard times. So long as state courts remain free to grant the injunctions unavailable in federal courts, suits seeking relief against concerted activities in breach of contract will be channeled to the States whenever possible. Iron-

¹⁹ Section 4 commences: "No court of the United States shall have jurisdiction to issue any restraining order"

²⁰ *McCarroll v. Los Angeles County District Council*, 49 Cal. 2d 45.

ically, state rather than federal courts will be the preferred instruments to protect the integrity of the arbitration process, which *Lincoln Mills* and the *Steelworkers* decisions forged into a kingpin of federal labor policy. Enunciation of uniform doctrines applicable in such cases will be severely impeded. Moreover, the type of relief available in a particular instance will turn on fortuities of locale and susceptibility to process—depending upon which States have anti-injunction statutes and how they construe them.

I have not overlooked the possibility that removal of the state suit to the federal court might provide the answer to these difficulties. But if § 4 is to be read literally, removal will not be allowed.²¹ And if it is allowed, the result once again is that § 301 will have had the strange consequence of taking away a contract remedy available before its enactment.

V.

The decision deals a crippling blow to the cause of grievance arbitration itself. Arbitration is so highly regarded as a proved technique for industrial peace that even the Norris-LaGuardia Act fosters its use.²² But since unions cannot be enjoined by a federal court from striking in open defiance of their undertakings to arbitrate, employers will pause long before committing themselves to obligations enforceable against them but not against their unions. The Court does not deny the desirability, indeed, necessity, for injunctive relief against a strike over an arbitrable grievance.²³ The Court says

²¹ Compare note 19, *supra*, with the language of the removal statute, 28 U. S. C. § 1441, allowing removal in cases "of which the district courts of the United States have original jurisdiction."

²² See Norris-LaGuardia Act, § 8, 47 Stat. 72, 29 U. S. C. § 108.

²³ The Court acknowledges, of course, that an employer may obtain an order directing a union to comply with its contract to arbitrate. Consistently with what we said in *Lucas*, *supra*, note 2, a strike in the face of such an order would risk a charge of contempt.

only that federal courts may not grant such relief, that Congress must amend § 4 if those courts are to give substance to the congressional plan of encouraging peaceable settlements of grievances through arbitration.

VI.

A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

In the case before us, the union enjoys the contractual right to make the employer submit to final and binding arbitration of any employee grievance. At the same time, the union agrees that "There shall be no strikes . . . for any cause which is or may be the subject of a grievance."²⁴ The complaint alleged that the union had, over the past several months, repeatedly engaged in "quickie" strikes over arbitrable grievances. Under the contract and the complaint, then, the District Court might conclude that there have occurred and will continue to occur

²⁴ See *Atkinson v. Sinclair Refg. Co.*, decided this day.

breaches of contract of a type to which the principle of accommodation applies. It follows that rather than dismissing the complaint's request for an injunction, the Court should remand the case to the District Court with directions to consider whether to grant the relief sought—an injunction against future repetitions. This would entail a weighing of the employer's need for such an injunction against the harm that might be inflicted upon legitimate employee activity. It would call into question the feasibility of setting up *in futuro* contempt sanctions against the union (for striking) and against the employer (for refusing to arbitrate) in regard to prospective disputes which might fall more or less clearly into the adjudicated category of arbitrable grievances. In short, the District Court will have to consider with great care whether it is possible to draft a decree which would deal equitably with all the interests at stake.

I would reverse the Court of Appeals and remand to the District Court for further proceedings consistent with this dissenting opinion.

